



剑桥政治思想史原著系列（影印本）

CAMBRIDGE TEXTS IN THE HISTORY OF POLITICAL THOUGHT

教会至上与教皇至上

Conciliarism and Papalism

Edited by

J. H. BURNS and

THOMAS M. IZBICKI

中国政法大学出版社

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Conciliarism and papalism

Almost on the eve of the sixteenth-century Reformation, the long-running debate over the respective authority of popes and councils in the Catholic Church was vigorously resumed. In this collection the editors bring together the first English translation of four major contributions to that debate. In these texts, complex arguments derived from Scripture, theology and canon law are deployed. The issues that emerge, however, prove to have a broader significance. What is foreshadowed here is the confrontation between 'absolutism' and 'constitutionalism' which was to be a dominant theme in the politics of early-modern Europe and beyond. Even on the threshold of the twenty-first century the concerns that underlie and animate the scholastic disputations in these pages retain their force. This volume includes introductory material which elucidates the context of the debate, as well as a comprehensive bibliography.

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AND

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HISTORY OF POLITICAL THOUGHT



Conciliarism and papalism

剑桥政治思想史原著系列

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在政治理论领域，“剑桥政治思想史原著系列”作为主要的学生教科丛书，如今已牢固确立了其地位。本丛书旨在使学生能够获得从古希腊到20世纪初期西方政治思想史方面所有最为重要的原著。它囊括了所有著名的经典原著，但与此同时，它又扩展了传统的评价尺度，以便能够纳入范围广泛、不那么出名的作品。而在此之前，这些作品中有许多从未有过现代英文版本可资利用。只要可能，所选原著都会以完整而不删节的形式出版，其中的译作则是专门为本丛书的目的而安排。每一本书都有一个评论性的导言，加上历史年表、生平梗概、进一步阅读指南，以及必要的词汇表和原文注解。本丛书的最终目的是，为西方政治思想的整个发展脉络提供一个清晰的轮廓。

本丛书已出版著作的书目，请查阅书末。

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Cambridge Texts in the History of Political Thought is now firmly established as the major student textbook series in political theory. It aims to make available to students all the most important texts in the history of western political thought, from ancient Greece to the early twentieth century. All the familiar classic texts will be included but the series seeks at the same time to enlarge the conventional canon by incorporating an extensive range of less well-known works, many of them never before available in a modern English edition. Wherever possible, texts are published in complete and unabridged form, and translations are specially commissioned for the series. Each volume contains a critical introduction together with chronologies, biographical sketches, a guide to further reading and any necessary glossaries and textual apparatus. When completed, the series will aim to offer an outline of the entire evolution of western political thought.

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Editors' note

The division of editorial labour between us has been as follows. The Introduction was written by James Burns and revised in the light of comments and suggestions by Thomas Izbicki. The Chronology, the Note on terms and the Bibliography were compiled jointly. The translation and annotation were the work of Thomas Izbicki: successive drafts were read by James Burns and the final version was prepared on the basis of extensive consultation between the two editors.

Our thanks, as always in such undertakings, are due to many more colleagues and friends than can be listed here. However, a special word of gratitude for help in solving various problems should be addressed to Paul Pascal, Peter Stein and those who replied to queries posted on the listserves MDVLPHIL and MEDTEXTL. We are also indebted to Quentin Skinner, and to Jeremy Mynott and Richard Fisher of the Cambridge University Press for their support, encouragement and advice at various moments. At the production stage, we have been greatly assisted by Vicky Cuthill, Lyn Chatterton, Cherrill Richardson, and Frances Brown (whose copy-editing of a complex text was as helpful as it was careful).

Introduction

I

Three of the texts translated in this volume were the immediate by-products of a sharp if short-lived crisis in the ecclesiastical politics of the early sixteenth century. Written during a period of little more than a year, the tracts by Tommaso de Vio (1468–1534: better known, and referred to below, as Cajetan) and Jacques Almain (c. 1480–1515) are essentially polemical in character, albeit highly technical in content and style. The text by John Mair (c. 1467–1550) – unlike the others, an extract from a much longer work – provides an epilogue.¹ The echoes of the crisis of 1511–12 still indeed reverberated half a dozen years later, but Mair was not engaging in what might be called the hand-to-hand fighting of controversy when he turned, in his 1518 commentary on St Matthew's gospel, to the issues that had embroiled his brilliant pupil Almain with the master general of the Order of Preachers. And even when reading the writings of Cajetan and Almain we are not confronted only – or even mainly – with specific questions as to the status and claims of the council (or what purported to be the council) of the Church which met in Pisa and Milan at the time when those works were written. Each of the two contenders was (and was conscious of being) the bearer of a tradition: each tradition embodied one of the ways of envisaging, interpreting and upholding the polity of the Church that had divided theologians and canon

¹ Biographical notes on Almain, Cajetan, and Mair can be found in *The Cambridge History of Political Thought, 1450–1700*, 657–8, 666, 683.

lawyers for a century and a half. John Mair, for his part, was restating one of the rival doctrines in somewhat calmer times and perhaps in less vehement terms. Yet if the times were calmer in the limited context of the persistent debate between papalists and conciliarists within the Catholic Church, they were scarcely peaceful in a more general sense when Mair wrote the commentary he published in 1518. And the fact that the years with which this volume is immediately concerned were the years leading up to the far graver ecclesiastical crisis precipitated by Martin Luther may suggest that neither the argument over the Council of Pisa/Milan nor, for that matter, the broader contention between papalism and conciliarism can claim major importance in the history of early sixteenth-century Christendom. On this view, the arguments of Cajetan, Almain and Mair would constitute no more than a sideshow. There are, however, at least two reasons for questioning and countering that dismissive judgment.

First, if the appropriate context here is one in which the need to reform the Church is central, we must bear in mind that the assembly at Pisa in 1511 had precisely that reform as its agenda. Certainly it was also a political instrument manipulated by Louis XII of France in his conflict with Pope Julius II. No doubt the small number of those who met at Pisa would always have vitiated any claim the assembly might have had to be accepted as a genuine council instead of being dismissed as a mere *conciliabulum*. Yet for all its limitations it did represent an attempt to give effect to the feeling – persistent as it was in the early decades of the century – that reform of the Church “in head and members” was essential and could be achieved only by means of a general council. Thus Giovanni Francesco Poggio (1443–1522) – a defender in 1511 of papal authority against conciliar pretensions – had himself, seven or eight years earlier, vainly urged Julius II to summon such a council. The “schismatic cardinals” who met at Pisa rested their case on the undertakings Julius had given, on becoming pope, to take that action. Nor were “conciliarist” views left unexpressed at the court of a pope who had, to be sure, very different concerns in the forefront of his mind. Sometime in 1510 or 1511 (but in any case before the crisis precipitated by the assembly at Pisa), Giovanni Gozzadini (1477–1517) upheld the view that conciliar decisions were “of greater authority, strength and power than the pope’s statutes.” In

the end Julius himself was persuaded that the best way to counter a pretended council was to summon a genuine one. The fifth Lateran Council (1512-17) may have achieved little more by way of substantive reform than the *concihabulum* in northern Italy; but the widespread conviction remained that it was only by means of a council that the Church could arm itself adequately against the forces of heresy and schism.

Jacques Almain died before the Lutheran storm broke, but Cajetan and Mair lived through the first phases of what became the Protestant Reformation. For all their ecclesiological differences, they were at one in their unhesitating condemnation of Luther. Cajetan indeed was to be one of Luther's principal doctrinal adversaries.² Whereas, however, he and his Parisian opponents had drawn upon the same sources for arguments conducted within the limits of a recognized framework, Luther so defied those conventions as to impose new tactics upon those who sought to defend Catholic orthodoxy. Thus Cajetan can be seen as refining his methods of exegesis in order to refute Luther.³

The parameters of controversy might change, but the need for reform and the means of achieving it did not. When Reformation outside the Catholic Church evoked Counter-Reformation within (a process of which Mair, unlike Cajetan, saw the start), it was, once again, in a general council that the most important measures were initiated. Trent was, to be sure, a manifestation of the conciliar element in the life of the Church very different from what came in time to be called the *conciliarism* of the fifteenth century. Yet the process *was* conciliar, and questions about the authority and competence of councils could still be and still were asked. It is not without significance that the most comprehensive attempt ever made to assemble, expound and evaluate the arguments as to the respective powers of pope and council was printed only a few years before the first session of the Council of Trent (having however been compiled at much the same period as the texts in this volume).

² See J. Wicks (ed. and trans.), *Cajetan Responds. A Reader in Reformation Controversy* (Washington, DC, 1978). This includes a partial translation of Cajetan's 1521 *De divina institutione pontificatus Romani pontificis*. Mair's reaction to Luther is expressed mainly in his 1529 *In quatuor Evangelia expositiones*.

³ See on this Wicks, *Cajetan Responds*, 29, 31, and esp. 34-8. Mair for his part also tried to adjust to intellectual change, especially in the later revisions of his commentaries on the *Sentences*.

Certainly Domenico Giacobazzi (1443–1527) was concerned in his *De concilio* (1538) to refute conciliarist claims; but his encyclopedic method ensured that the arguments of his opponents were fully recorded. And even at Trent the old conciliarist case did not go entirely by default: Robert de Ceneau for one (a Parisian pupil of John Mair) was still ready to state it there.

The unmistakable prominence of Paris and Parisian teaching in this connection is a reminder of a point that will serve to open up the second reason for regarding the controversy between papalism and conciliarism in this period as having more than minor significance. This concerns the more strictly *political* bearing of the issues debated in this volume. The comparative importance of these early sixteenth-century polemics in their ecclesiastical context is one thing; but what claim does this debate have to consideration in the history of political thought with which this series is concerned?

The answer has two aspects, the first perhaps more obvious and more familiar than the second. In the historiography of European political ideas it has been received wisdom for at least a century that conciliarist opposition to papal "absolutism" was an essential element in the development of "constitutionalism" – specifically, of the theory and practice of "limited monarchy." That opposition was seen as having taken shape (whatever its earlier roots or "foundations" may have been) in the "Conciliar Movement" of the late fourteenth and early fifteenth centuries. At the same time, the revival or prolongation of this conciliarist tradition by writers like Almain and Mair has been recognized as having its own particular importance – not least as one of the main channels through which late-medieval "constitutionalism" flowed into the "resistance theory" of both the Reformation and the Counter-Reformation. None of this has lost its importance, even if the language in which it has usually been expressed now invites the caution implicit in the use here of inverted commas around certain key terms. Neither "constitutionalism" nor the "absolutism" to which it is opposed can be regarded as an unproblematic concept; but the use of such terms remains essential in the discussion of issues that are historically real and politically inescapable.

What was referred to above as the prolongation of the conciliarist tradition was not a matter only of the writings of Almain, Mair and others, nor of the use of their ideas in post-Reformation polemics.

It is a striking fact that those ideas were given wider circulation over a period extending into the eighteenth century. The media for this were, above all, the two great editions (published respectively in 1606 and 1706) of the works of Jean Gerson; for these incorporated not only his own immensely influential writings but also cognate works by his contemporaries and – crucially for present purposes – the texts by Almain and Mair included in this volume. The importance of this derives in part from the fact that the decision thus to expand those editions was a deliberate continuation of the conciliarism of the university of Paris. The key figure was the editor of the 1606 edition, Edmond Richer (1559–1631), briefly and controversially syndic of the Sorbonne and a vigorous polemicist at the turn of the sixteenth and seventeenth centuries.⁴ The dates will at once make it clear that we are not dealing here with arguments in favour of “limited monarchy” in the temporal realm. On the threshold of “the age of Louis XIV,” we are not far from the high-water mark of the absolute monarchy we associate with the *ancien régime*. In that context the point of “conciliarism” is that it can serve, not as part of the armory of secular “constitutionalism,” but as a weapon in the defense of Gallicanism against what would come to be known as Ultramontanism. It is important, therefore, to bear in mind that a writer like Mair, besides firmly reasserting the ultimate supremacy of council over pope, also rehearses the standard case against the pope’s claim to temporal supremacy over secular rulers. The texts in which he does so have no place in the present edition; but, together with even more substantial work by Almain to the same purpose, they were carefully included in the Gerson editions of 1606 and 1706.⁵

In this there is neither contradiction nor incoherence. The effect of both conciliarism and Gallicanism was to restrain the tendency for papal “fullness of power” to become an omniscient and

⁴ The Almain and Mair texts were also reprinted in Book IV of *Vindiciae doctrinae Scholae Parisiensis . . . contra defensores monarchiae universalis et absolutae Curiae Romanae* (Cologne, 1683), and the 1706 Gerson edition was reissued in 1728. It should also be noted that Almain’s *Libellus* had been reprinted several times between 1518 and 1526.

⁵ Almain’s *Expositio circa decisiones quaestionum M. Guillelmi Ockham, super potestate summi Pontificis* first published in the 1518 edition of his *Opuscula* and separately reprinted in 1526 and 1537, was also included by Melchior Goldast in his *Monarchia*, vol. 1 (Hanover, 1611).

universal sovereignty; and the rejection of such a sovereignty was essential to the position claimed by the monarchies of the *ancien régime*. There may be some irony in the fact that arguments intended to show that kingship properly understood (Mair's *politia regalis et optima*) necessarily involved such limits to royal power as we should term "constitutional" could be associated with the defense of "absolute monarchy." Yet even that irony may be lessened by a more carefully nuanced understanding of what a term like *potestas absoluta* really meant. It is still necessary, however, to consider how the arguments used against Almain and Mair and in defense of the papalist view of the Church affect political thinking in a wider sense. How, in particular, does the position adopted by Cajetan contribute to an understanding of monarchy in general?

The answer may usefully be approached by first considering a position Cajetan did *not* take. It was possible for a defender of the papal monarchy to base himself upon a conception of monarchy as such which precluded the element of consent that was fundamental in theories like those of Mair and Almain. Thus Poggio, writing at the same time and in the same circumstances as Cajetan, insists on a fundamental difference between *regimen monarchicum* and *regimen politicum*. Under "political" rule the fullness of power lies ultimately with the community; under monarchy it lies with the ruler. The authority of a monarch may be said to be essentially patriarchal: whether pope or king, he is *paterfamilias ipsius domus*. Certainly there are systems of temporal government in which the ruler is subject to the corporate authority of his subjects and may be deposed by them for misrule. These, however, are not truly "monarchical" regimes: they are, for Poggio, to be characterized as "political."⁶ Cajetan's approach is more radical. He bluntly rejects the suggested parallel between civil and ecclesiastical government, insisting rather that the papal monarchy enjoys a unique position and unique authority. Temporal government rests upon natural law; temporal kingship *may* be based on the consent of its subjects. Perhaps, indeed, in the final analysis, all temporal monarchies – and, for that matter, all other forms of civil government – must have that consent as their basis. The authority of Peter and of his successors,

⁶ This argument is developed at an early stage in the "Reply to arguments against the power of the pope" in Poggio's *De potestate papae et concilii* (Rome?, 1512²).

however, can never be so understood: it is based directly and unconditionally upon God's ordinance. Papal authority, in fact, *is* divine authority, albeit exercised by a "vicar" – a human representative who may, being human, succumb to human weaknesses. Against that misfortune the remedy (and the only remedy) God has provided is earnest prayer. This cannot, to be sure, mean that the Church as a body – the mystical body of Christ Himself – has *no* corporate authority. There are extreme circumstances (essentially when a pope has fallen into heresy) in which that corporate authority may have to be exercised by a general council; but this, for Cajetan, has no "constitutional," no political implications. The divinely ordained papal monarchy still stands above and apart from such arguments.

In this theory, then, a potent image of absolute monarchy based unequivocally on "divine right" is presented; but it is presented in a frame utterly unacceptable to those temporal monarchs who were building, or were later to build, what we think of as the "absolutism" of the early-modern European realm. It was unacceptable for at least two reasons. First, by allowing or even insisting that temporal rule derived in the end from the consent of the community, it opened up, or left open, the way toward the advocacy of unpalatably "limited" kingship, if not to the rejection of kingship altogether. Second, if it did not of itself entail the reassertion of the old papal claim to temporal supremacy, it did lay a foundation for the assertion of an "indirect power" scarcely if at all less at odds with the purposes and pretensions of monarchs whose *liberum imperium* was becoming the vehicle for the sovereignty of the state. Such a state could not live at ease with the kind of church Cajetan (and perhaps Calvin?) had in mind.⁷

II

With these general considerations in mind, it is time to take a more particular look at the circumstances and character of the four texts presented below. What has sometimes been called – with a good

⁷ The notion of "indirect power" was a well-established and persistent feature of Dominican thinking. Cajetan's tracts, it may be noted, were reprinted in later sixteenth-century editions of his *Opuscula* (1576; 1582; 1588) and included by J. T. de Rocaberti in vol. 19 of his *Bibliotheca maxima pontificia* (Rome, 1699).

deal of exaggeration – “the schism of Pisa” began effectively on May 16, 1511. It was then, following abortive attempts a few months before by Louis XII and the Emperor Maximilian to induce Julius II to summon a council, that such a summons was issued by nine cardinals, though perhaps fully supported by only five, headed by Bernardino Lopez Carvajal. The five included one other Spaniard, one Italian and two Frenchmen. The proclamation specified September 1 as the date and Pisa as the place for the assembly. In the event no formal meeting took place until November. Three short sessions in Pisa were followed in the early months of 1512 by five more in Milan. The fundamental decree of the Council of Constance on conciliar authority, *Haec sancta* (1415), was reissued; the basic doctrines and policies adopted both at Constance and at Basel were reasserted; and in the eighth session, on April 21, 1512, Julius II was declared suspended from his papal authority. Julius meantime had responded vigorously to the challenge. Having, it is said, encountered the May 1511 proclamation on the door of the church of San Francesco in Rimini, he lost little time in following the advice of Cajetan among others by issuing his own summons to the fifth Lateran Council. This was promulgated on July 25, 1511, with April 19, 1512 as the date for the fathers to assemble. By the time that council was formally inaugurated on May 3, 1512, the threat from its rival was virtually at an end. Political support apart from that of France had never been strong. The Emperor vacillated; Ferdinand of Aragon had rallied decisively to the pope’s side as early as mid-November 1511; and his son-in-law Henry VIII evidently had little inclination at this time to commit himself against the papacy. The purported suspension of the pope in April 1512 was a mere dying gesture. The *concihabulum*, as it now manifestly was, moved first to Asti and then to Lyons, where, on July 6, 1512, what proved to be its last session took place.

If we turn from politics to propaganda we can see that the issue was joined at once in the arena of juristic and ecclesiological doctrine. It is not hard to believe that Cajetan as master general of the Dominicans had a share in drafting Julius’ condemnation in July 1511 of the impending *concihabulum*. The bull *Sacrosanctae Romanae ecclesiae* launched the attack which Cajetan was to continue and develop two or three months later in the first of the texts included in this volume. By then Julius was about to issue an ultimatum to

those meeting at Pisa, with excommunication as the penalty for non-compliance. By then too, at least one of the first salvos in defense of Pisa had been fired.⁸ The *Apologia sacri Pisani concilii* by Zaccaria Ferreri, dated September 27, 1511, strongly upheld both the council's validity and its right to resist the pope.⁹ There is, however, no need to suppose that Cajetan had Ferreri or any other specific adversary in mind when he set to work that autumn on the writing of his *Auctoritas papae et concilii sine ecclesiae comparata*. This was completed on October 12, and published in Rome on November 19, 1511. Despite the immediate crisis which had evoked it (and which echoes clearly in Cajetan's dedicatory epistle), this is in many ways an austere technical text. Drawing on the resources he found in the work of his Dominican predecessor Juan de Torquemada (and, of course, on the teaching of Aquinas, to whom they both looked back), Cajetan sets himself to restate the essential papalist view of the polity of the Church. Starting with a firm assertion that the pope "has supreme power in the Church of God," he proceeds to examine the scriptural evidence for the comparative status of Peter and the other apostles, arguing the case for Peter's superiority and the consequential primacy of Peter's successor. It is from this firm position that Cajetan turns to the view he seeks to refute: the view that simple or absolute supremacy belongs, rather, to "the universal Church or the universal council." Here he confronts directly the doctrines proclaimed by the council of Constance, defended, above all, by Jean Gerson, and subsequently reiterated in even more radical terms by the council of Basel. It is here that what may be regarded as Cajetan's more strictly political ideas emerge.

It was not possible – nor did Cajetan attempt – to deny that authority in the Church was exercised by persons other than the pope who was, under Christ Himself, head of the mystical body. Just as Peter's fellow-disciples had had their share in the government of the apostolic Church, so now their successors, the bishops, shared in ecclesiastical jurisdiction. The power they exercised, how-

⁸ The first was not the most substantial that description could best be claimed (at least until Almain's *Libellus* appeared) by the *Consilium . . . habitum pro ecclesiae auctoritate* of the noted jurist Filippo Decio, whose views seem to have had great weight with the "schismatic cardinals." Decio's work was reprinted by Goldast in his *Monarchia*, vo. 2 (Hanover, 1614), 1667–76.

⁹ Reprinted by Goldast, *Monarchia*, vol. 2, 1653–63.

ever, was (Cajetan argued) different in kind from that wielded by the pope. The pope has *potentia praeceptiva*, power to command; significantly, Cajetan also uses the term *imperium* to describe it. The bishops, on the other hand, have "a kind of executive power" (*velut potentia executiva*). This is what Aquinas (according to Cajetan) calls *auctoritas gubernandi*, authority to govern; but the governing is essentially subordinate, the authority derivative or delegated. Its source lies in the "preceptive" power – identified by Aquinas as *auctoritas regiminis*, authority to rule. It is entirely consonant with this that Cajetan later insists on the pope's normally exclusive control of the power to appoint to ecclesiastical office (and, incidentally, to regulate the process for election to the papacy itself). A discussion with its starting-point in Paul's account of his opposition to Peter (Galatians 2) ends in a defense of the centralized papal monarchy.

There was, however, a threat to that monarchy potentially much more serious than the claims of individual bishops. When those bishops came together in a general council representing the Church as a whole, they might claim – they had claimed – an authority superior even to that of the pope himself. This indeed was the claim restated, in however small a voice, by the assembly at Pisa: this was what Cajetan was primarily concerned to refute. Now no orthodox theologian could deny the authority – even in some sense the paramount authority – of duly constituted ecumenical councils. What was at issue was the nature of that authority, its relationship to the authority of the pope, and – above all – the question whether the body of the Church could, in a council, exercise authority independently of the pope as its head. Cajetan's answer (directed above all against the view he found in Gerson) was absolutely clear. Gerson had argued that the Church as "a free and perfect community" necessarily had the power, collectively, to make and to interpret law. Cajetan responded by arguing that, without its head, no community is "perfect." Following the definition of law by Aquinas, with its insistence on the indispensable rule in lawmaking of "him who has care of the community" (its ruler or head), he cited and endorsed St Thomas' conclusion that "the holy fathers assembled in a council can ordain nothing without the intervention of the authority of the Roman pontiff." Thus, in the words of Cajetan's chapter-heading, "there is no legislative power in the Church apart

from the pope." And to this the similar attribution to the pope, already noted, of the appointing power is simply a corollary.

It is true that all this has to be hedged by some such qualifying term as *regulariter* – in the ordinary course. Might not matters be otherwise *casualiter* – in certain, doubtless exceptional, circumstances? Cajetan could not deny that they might be and sometimes had been otherwise. Uncertainty as to the validity of a claim to papal authority; disputed succession to that authority with the consequential risk or reality of schism; a situation in which the pope's capacity to govern the Church freely was questionable – these and perhaps other special circumstances might call for remedies only a general council could apply. Christ could not have, and had not, left His Church helpless at such times: after all, whatever kind of "headship" might pertain to the pope, Christ alone was, in the end, the true head of His mystical body. The hardest question of all, however, arose when the stumbling-block in the path of salvation was the very person of Christ's vicar. Could such an erring pope be deposed? Could the body act in that final drastic sense against its own head?

The answer, even for such a convinced papalist as Cajetan, could not be a simple negative. It was well-established doctrine that if a pope became a heretic he must not continue to exercise papal authority. For conciliarists there was a direct parallel with a temporal realm whose ruler had fallen into incorrigible tyranny: in both cases the community whose well-being was imperilled must act through the appropriate agency – the estates of the realm, the council representing the universal Church – and depose the delinquent. To this the papalist response, as stated by Cajetan, was more complex. For one thing, it involved the question whether a council could even come into being without being summoned by the pope.¹⁰ Cajetan acknowledges that this can happen, though he insists that such a "non-papal" council would be limited in its competence to dealing with the immediate crisis that had made its meeting necessary. If that crisis had arisen from papal heresy, what followed? It might be held that heresy *ipso facto* deprived the pope of authority; but

¹⁰ It is of some interest that this is the point as to which Cajetan makes his only references to contemporary authorities, citing the jurists Felinus Sandeus and Giovanni Antonio di Sangiorgio.

Cajetan finds no adequate ground for this view. A pope accused of heresy must be judged before he is condemned. For Cajetan the difficulty this entails is that someone still occupying the supreme papal office would be subject to and judged by another, higher power. This he cannot accept; and yet a judge must be found. The solution we are offered is a distinction between two kinds of power – that which is “authoritative” and that which is merely “ministerial.” In respect of the former the pope has no superior; but he is, in the case of alleged heresy, subject to the Church’s ministerial power, exercised indeed by a council, but a council with this strictly limited and wholly exceptional function.

No bald summary can do justice to the intricacy of Cajetan’s argument, pursued in the later chapters of his tract to deal with a complex series of related issues. Here it is time to turn to the response the argument soon evoked. The attention of the university of Paris was drawn to Cajetan’s work by the assembly at Pisa in January 1512, and in the following month the need for a reply was underlined by a letter addressed to the university by Louis XII. The faculty of theology entrusted the task of refuting the attack on some of its most cherished principles to one of its youngest members. Jacques Almain had been licensed in theology on January 26, 1512 and received his doctorate on March 31. By then he had already expounded the foundations, and sketched some outlines, of the argument he was to deploy against Cajetan. This was in his contribution to the *vespertina* presided over by his fellow-graduate Ludwig Baer.¹¹ The text translated here was completed by May 1512 – in the second month of Almain’s doctorate, as he points out at the end of the *Labellus*.

In a way perhaps not uncharacteristic of recently qualified academics, Almain begins his reply to Cajetan at a very general level, expounding what he takes to be the essential basis of various kinds of *dominium* or lordship. Thus, individual human beings have been endowed by God with natural *dominium* over whatever is necessary for their sustenance and welfare; and this includes a right of self-defense extending if need be to the killing of those who threaten

¹¹ The *Questio in vespertinis habita* was first published in the 1518 collection of Almain’s *Opuscula*: it was reprinted in the later collections mentioned above. A translation, by A. S. McGrade, is in J. Kraye (ed.), *Translations in Renaissance Philosophy* (Cambridge, 1997).

the individual's survival. In the same way – but *not* as a result of transfer or delegation by individuals – a political society has the right to act for its preservation and well-being. This right can be, and normally is, transferred by consent to a ruler or ruling body; but it is transferred only for the good of the whole community, and if ruling power is abused to the detriment of the whole, the ruler or rulers may and should be stripped of it by their subjects. It is on the basis of this general theory of society and government that Almain approaches the problem of authority in the Church.

Ecclesiastical authority is of course concerned, not with natural, but with supernatural ends. It is, at the same time, genuinely jurisdictional and indeed coercive in character, but its sanctions are spiritual not corporal. Such a power must be, in the most direct sense, divine in origin: God alone can establish it and order its location and exercise. Even in its plenitude or fullness, however, the authority of the Church is not omnicompetent. There are spheres of jurisdiction reserved to the temporal power (though that is not to restrict ecclesiastical jurisdiction to a narrowly "spiritual" sphere). Again, there are areas of the individual conscience where only God Himself can judge. Nevertheless what the Church *can* do by means of its power of jurisdiction remains supremely important, since salvation itself may depend on due submission to that power. The crucial question remains: on whom and in what measure did God confer such authority? The answer, for Almain, is to be found partly through biblical exegesis and patristic interpretation. The authority to bind and loose was given primarily to the Church as a body. That body, if it is to act as such, must be represented by a council; nor does Almain deny that, ordinarily, ecclesiastical jurisdiction will, at the highest level, be exercised by the pope as the successor of Peter, to whom Christ did indeed accord a special role. Almain, however, insists – applying his "political theory" to his exegesis – that this Petrine and papal primacy is to be construed in the same way as the primacy of the ruler in civil society. It subsists only for the good of the Church, and if it is exercised otherwise than for that good it may be abrogated by the Church (to which, ultimately, under God, it belongs). True, it was Christ Himself who instituted Peter as the chief shepherd of His flock; but in so doing He was taking action which could, had it been necessary, have been taken by the Church itself. Turning against his opponent the distinction

between "authoritative" and merely "ministerial" power, Almain insists that it is the papacy not the council that wields the latter. The council, embodying the God-given life of the Church as the body of Christ, has (we might say) the real authority. Almain's conclusion is indeed comprehensive: the Church and the council representing it are "absolutely superior to the supreme pontiff in jurisdiction, in the power to confer the . . . papacy on a single person, and in the power to define those things which are of the faith."

On that basis the question of the deposing power was hardly problematic. The council has "authoritative" and not merely "ministerial" power to depose a heretical pope. Suppose, however, that the issue is not one of heresy but of some other delinquency: what then? Cajetan had rejected any suggestion that any power to depose existed in such a case; but for Almain "any notorious crime scandalizing the Church" could give grounds for deposition. Here as elsewhere he invokes the parallel with civil society. To deny this power to the Church would leave the ecclesiastical polity inferior in its organization to "a civil or natural polity." No community can "abdicate the power of bringing down or killing" a ruler who has become "a member corrupting the whole body." Christ, like "a king departing to a distant region," has left a "vicar general" who "can be removed by the community if he rules tyrannically."

It was this alleged analogy – this virtual identity – between the civil and ecclesiastical polities that prompted Cajetan, in his reply to Almain, to develop an important "political" argument. Much of the *Apologia* may be left to speak for itself, as it somewhat repetitively does in a point-by-point review of the issues and authorities. When, however, Cajetan reaches the point in Almain's *Libellus* just considered, he resumes and elaborates his earlier discussion of the various modes or levels of political power. Already in his 1511 tract he had argued that the conciliarist view "perverts the constitutional order of the Church" (*pervertit ordinem regiminis ecclesiae*) by turning monarchy into an aristocratic or a popular regime. In the *Apologia* he takes the argument further. The essential point, he argues, is to locate, within any political system, the *summum regimen* which is also the *summum tribunal* – the forum "where all issues are to be resolved." Subject to that final authority various arrangements may be made for what Cajetan calls the *regimen medium* – the day-to-day

conduct of government. Even under a "popular" system, that government may be monarchical. In a true monarchy, however, the ruler has *summum regimen* and constitutes the *summum tribunal*; and this is the kind of monarchy that is found in the Church. In the "civil or natural" order all power, including that of kings, may indeed be grounded on the consent of the community; not so in the supernatural order, where the papal monarchy has its place defined for it by God's ordinance. In more general terms, at the very start of his *Apologia*, Cajetan had taken issue with Almain's "natural-law" argument on the ground that, if we are to understand things "according to their own natures," we cannot understand the Church as if it were "a free community." The Church "derives the first principle of [its] origin, perfection and power not from individuals or from the community but from the head . . . Jesus Christ"; and thus "ecclesiastical government . . . is, by its very nature, in a single prince."

The collapse of the would-be Council of Pisa/Milan – which even Louis XII finally dismissed as "a bad joke" – was followed within a year or two by the king's death, preceded by that of Julius II. In January 1516, Francis I, then negotiating the concordat with Leo X which was concluded later that year, ordered the university of Paris to end its theological scrutiny of Cajetan's views. John Mair, in the 1516 expansion of the commentaries on Book IV of the *Sentences* he had previously published in 1509 and 1512, stated explicitly that he would leave aside the issue of papal and conciliar authority.¹² A year or two later, when writing his commentary on Matthew, at a time when the university was vehemently resisting the terms of the concordat, he was ready to resume the debate and did so with Cajetan in the forefront of his mind.

In the context of the present edition, certain points in Mair's résumé of the Parisian conciliarist case call for special mention. He is particularly concerned to reassert the validity of the parallel between the ecclesiastical and the civil polity: the former, established by "Christ the best of lawgivers" cannot be thought inferior to temporal kingship in provision for the welfare of its subjects. The inherent right of the Christian community to take whatever

¹² Mair, *In Quantum Sententiarum* (Paris, 1516), fol. 158^r. The dedicatory epistles in this edition are dated in late November and early December 1516.

measures are necessary to safeguard itself against misgovernment cannot be denied, even though Mair recognises, of course, that the Church cannot in every respect be equated with a "free community" in the civil order. Mair, who was working at much the same time on the *Historia Majoris Britanniae* he was to publish in 1521, is perhaps especially sensitive to the nuances of political power and their reflection in both the temporal and the spiritual realm. This does not necessarily make his position more "radical." If there is some weight in Oakley's suggestion that Mair was "a somewhat less eager conciliarist than Almain," the reason may be that he was more acutely aware of the need for an effective ruling power. Certainly he unhesitatingly rejects any suggestion that the Church's constitution is that of a *politia mixta*; and kingship under the *politia regalis et optima* that Mair sees both in the Church and in the well-ordered realm would wield real and substantial power.¹³ Yet that power is in the end, Mair insists, "ministerial": the ruler, whether pope or king, is the servant of the community, even if the power of the latter is essentially a reserve power, operative only *casualiter*, in certain exigencies, not *regulariter*. Both, in any case, function within a divinely ordained framework, where the one truly absolute power is Christ's: He alone has what Mair calls *suprema potestas regularis et casualis independens*.

III

The translations below are based on the most authentic texts the editors have been able to establish. In the case of the two tracts by Cajetan there is a modern edition, and on this the translations have been primarily based.¹⁴ The edition in question does not claim full critical authority: a number of its editor's readings are in fact debatable or plainly mistaken and recourse has been had here when necessary to the earlier printed texts. In the case of the Almain and Mair texts there is no comparable modern edition. Both are most readily available in the 1706 edition, by Louis Ellic Du Pin, of the

¹³ Mair's political ideas in both the ecclesiastical and the civil context are discussed in J. H. Burns, *The True Law of Kingship: Concepts of Monarchy in Early Modern Scotland* (Oxford, 1996), 39–75.

¹⁴ V. M. J. Poillet (ed.), *Thomas de Vio Cardinalis Casertanus: scripta theologica*, vol. 1 [no more published] (Rome, 1936).

works of Jean Gerson; and this has been taken as the starting-point for the translation. Du Pin himself, however, was in effect reprinting the texts he found in the earlier (1606) edition of Gerson's *Opera*, prepared (as noted above) by Edmond Richer. While some of Richer's emendations are necessary corrections of imperfect early printings, the authority of the original editions is to be preferred wherever possible; and this has been the ultimate basis of the translations here. It should be added that the dedicatory epistles in the original Cajetan and Almain texts have been included in the translations, but not the customary verses which precede the texts.

Theological and juristic Latin in the scholastic mode seldom lends itself to a rendering in fluent and idiomatic English; and attempts to produce an acceptably readable translation constantly incur the risk of representing the argument inadequately, if not of actually falsifying it. The versions here are inevitably the result of a compromise, justified (at least in the editors' eyes) by the consideration that a "literal" translation would have been stylistically intolerable, while a "free" rendering would soon have become intellectually indefensible.

The texts in question are, as indicated above, highly technical in character and content, employing an elaborate technical language in which terms often carry a meaning other than that which would initially suggest itself to a modern reader. The Note on terms is an attempt to provide some guidance on problems of this kind.

A note on terms

Authority/reason Medieval arguments over institutional structures were based on a distinction between **authority**, citation of some prestigious text, and **reason**, demonstration of a point by formal logic, often by means of a syllogism.

Causes Aristotle's idea of four causes, material, efficient, formal, final, was used in the analysis of institutions. These were that out of which something was made (material), the one who made it (efficient), the form imposed on the material (formal) and the reason for which it was made (final).

Equity (*epieikeia*) Aristotle argued that equity needed to be applied wherever the letter of the law fell short of true justice. This doctrine was used, among other things, to get around the canonistic idea that only a pope could summon a general council.

Obediences The adherents of the different papal claimants in the Great Schism were called obediences. From 1378 to 1409 there were two, those of the Roman line (Urban VI, Boniface IX, Innocent VII and Gregory XII) and of the Avignon line (Clement VII and Benedict XIII). After the Council of Pisa attempted vainly to end the Schism by deposing Gregory and Benedict and electing a new pope, there was a third, Pisan obedience (Alexander V, John XXIII). All of these obediences were merged into the Council of Constance (1414-18) which disposed of all three claimants and elected Martin V as the sole Roman pontiff.

Ordinary gloss Many of the authoritative texts taught in the

schools, including the Bible, the collections of canon law and most Roman law texts, had an ordinary gloss, a commentary commonly copied along with the text, usually surrounding it on the page. The gloss on the Bible was a compilation made over centuries, and it included the Interlinear gloss (annotations between lines of the text) and the Marginal gloss (surrounding the text). The ordinary gloss to Gratian's *Decretum*, by Johannes Teutonicus, was revised by Bartholomaeus Brixienensis. That to the Gregorian *Decretals* was by Bartholomaeus Parmensis; those to the *Liber sextus* and the *Clementines*, by Johannes Andreae. The ordinary gloss to each part of the Justinian compilation of Roman law was by Accursius.

Perfect community A "perfect" community or political entity possessed all powers needed for government, including the power to punish those subject to it. The claim that a council could be "perfect" in this sense includes the supposition that it could punish an erring pope.

Politics According to Aristotle's classic discussion of forms of government, there are three good constitutions: **monarchy** (royal), **aristocracy** and **timocracy** (rule by a larger group in the best interests of the whole community). In the *Politics*, Aristotle uses the generic term **polity** for the third of these; but medieval authors commonly followed his usage in the *Ethics*, where he calls it **timocracy**. Correspondingly, there are three bad constitutions, **tyranny**, **oligarchy** and **democracy**, similar regimes used for the selfish ends of the rulers. The **mixed polity**, combining elements of each good polity, was discussed frequently by political theorists.

Power, ecclesiastical The powers of the clergy, according to a distinction in canon law, were divided into **orders** and **jurisdiction**. The power of **holy orders**, one of the seven sacraments, was the ability to perform sacramental acts, including celebration of the eucharist and the absolution of sinners. **Jurisdiction** was the power of ecclesiastical government. It was divided, in turn, into the **internal forum** of confession and the **external forum**, which covered multiple powers, including the decision of cases and the imposition of censures. One of these censures, **excommunication** of individuals, could be incurred through a sentence or imposed *latae sententiae*,

that is from the very fact of committing a forbidden act. Certain aspects of these powers, involving **binding and loosing**, including absolution of sinners and issuing authoritative decisions, were understood as pertaining to the **power of the keys**, which had been conferred by Jesus both on Peter (Matthew 16) and on all the apostles (Matthew 18). The pope was described, especially by papal apologists, as possessing **plenitude of power**, which permitted him to act virtually unchecked by human wills for the good of the Church and Christendom. Other pastors, especially bishops and parish priests, were described as having **cure of souls**, being responsible for the spiritual welfare of those subject to them.

Wayfarer (*viator*) Christians were regarded as wayfarers or pilgrims, passing through this world on their way to the next.

Chronology

- 1378 Beginning of the Great Schism.
- 1409 Council of Pisa.
- 1414-18 Council of Constance.
- 1415 Decree *Haec sancta* issued.
- 1417 Decree *Frequens* issued; Schism ends with the election of Martin V.
- 1423-4 Council of Pavia-Siena.
- 1431 Eugenius IV elected pope.
- 1431-49 Council of Basel.
- 1439 Council of Basel deposes Eugenius IV and elects Felix V.
- 1437-44 Council of Ferrara-Florence.
- 1460 Pius II forbids appeals from pope to council (bull *Execrabilis*).
- 1482 Andrea Zamometic attempts to summon a council at Basel.
- 1503 Julius II elected pope.
- 1511 Council of Pisa summoned by dissident cardinals with French support (May); Fifth Lateran Council summoned by Julius II (July); council opens at Pisa (November); Cajetan's *De comparatione* published (November).
- 1512 Fifth Lateran Council opens (April); Almain's *Libellus de auctoritate ecclesiae* published (November).
- 1513 Julius II dies, and Leo X is elected; France adheres to Lateran Council.

- 1514 Cajetan's *Apologia* published.
1516 Concordat between Francis I of France and Leo X.
1517 Fifth Lateran Council ends; Cajetan made a cardinal;
 Luther's 95 Theses
1518 Mair's disputation published as part of his *In Mat-
 thaeum ad litteram expositio*.

List of abbreviations

CC	<i>Corpus Christianorum</i> , Series Latina.
COD	<i>Conciliorum oecumenicorum decreta</i> (ed. G Alberigo et al.), 3rd edn, Bologna, 1973.
CSEL	<i>Corpus Scriptorum Ecclesiasticorum Latinorum</i> .
Du Pin	Gerson, Jean Charlier de, <i>Opera omnia</i> (ed. L. Ellies Du Pin), Antwerp, 1706; Hildesheim, 1987.
Mair, <i>In Matthaeum</i>	Johannes Mair, <i>In Matthaeum</i> , Paris, 1518
Mansi	<i>Sacrorum conciliorum nova et amplissima collectio</i> (ed. J. D. Mansi), Paris, 1901–27; Graz, 1960–1.
OC	Gerson, Jean Charlier de, <i>Œuvres complètes</i> (ed. P. Glorieux), Paris, 1960–.
<i>Opera</i> (Parma)	Thomas Aquinas, <i>Opera omnia</i> , Parma, 1852–73; New York, 1948–50
<i>Opera</i> (Rome)	Thomas Aquinas, <i>Opera omnia</i> , Rome, 1882– (Leonine edition).
PL	<i>Patrologia latina</i> (ed. J.-P. Migne).
Pollet	Cajetan, <i>De comparatione auctoritatis papae et concilii cum Apologia eiusdem tractatus</i> (ed. V. M. J. Pollet), Rome, 1936.
Richer	Gerson, Jean Charlier de, <i>Opera</i> (ed. Edmond Richer), 4 vols., Paris, 1606, vol. 1.

Canon law

Gratian's *Decretum*:

D. c. = Distinction and chapter (e.g. D. 40 c. 6).

C. q. c. = Causa, question and chapter (e.g. C. 24

q. 1 c. 1).

Decretales Gregorii IX (X); *Liber sextus Bonifacii VIII* (VI); *Constitutiones Clementinae* (Clem.), *Extravagantes communes* (Extrav. commun.):

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TOMMASO DE VIO OF GAETA

On the comparison of the authority of pope and council

To the most reverend father in Christ and lord, lord Niccolò Fieschi, cardinal presbyter of the holy Roman church of the title of Santa Prisca, Brother Tommaso de Vio of Gaeta, professor of sacred theology and master general of the whole Order of Preachers, servant of his lordship.

Even though I think, most eminent father Fieschi, that this comparison of the authority of the supreme pontiff and the whole Church, which I wrote recently, will be read, received, judged by many from dissimilar viewpoints which will differ as they are split into diverse factions in this stormy time, nevertheless, I think that they will be pleased to be informed of even the least reasons which are advanced in this affair, so extraordinary yet suitable to these times, for adversaries and rivals to assail, for friends to defend those things which belong to the truth, and for others to have at hand to read what resolution should be reached concerning such a great upheaval in our own day and such a great controversy, both frequently in the past and at the present time.

I, master general of the Order of Preachers, most zealous for the Roman church and the truth, wrote this comparison of the supreme authority in defense of the truth and the apostolic see gladly, not so that I might please men – although I would not spurn attaining that too – but to be a servant of Jesus Christ and the truth. And I rightly dedicate it to you under the present circumstances; and I inscribe it very gladly, because you yourself now have been adorned

with the highest honors by that see which I defend, and which your most distinguished family, the Fieschi, always has furnished with most distinguished men, bishops, cardinals and supreme pontiffs.

And since I know that you, the best protector of the Order of Preachers, are exceedingly desirous of procuring and preserving ecclesiastical unity and disseminating the truth, I do not doubt that you will receive what I have inscribed and dedicated to you as a member of that order on behalf of the truth and the unity of such an authority in a favorable spirit, with the probity for which you are esteemed and with singular good will, and that you will consider them to be among the other evidences of my eternal willingness and duty toward you.

Chapter I

That the pope has supreme power in God's Church

Intending without restraint to compare the pope's power to the power of the Church and the universal council, first, the pope's power must be rightly placed; then it will be compared especially to the authority of the apostles, then, to that of the Church in general and the universal council, next, in particular cases, first that of heresy, second, that of incorrigibility, and, last, in certain situations, so that it may be grasped simply and in itself. I intend to use only reasonable arguments, addressed to learned men alone, without any passion, nevertheless, under the judgment of the holy Roman church.

Lest someone should think I am placing my sickle in another's field [Deut. 23:25], I say in advance that, because the pope's authority is immediately from God and revealed in sacred Scripture, and the universal Church's authority is said to be immediately from God, as the Council of Constance declared,¹ this matter belongs first and principally to theologians, whose work is scrutinizing sacred Scripture and divine works; secondarily, however, in so far as it is declared in the sacred canons, it belongs to canonists. Accordingly, those who defer first to the canonists err gravely in this matter. It is necessary, therefore, that a teachable man peruse in this matter both theologians and canonists and, giving all their due, accord pri-

¹ COD 409-10

macy to theology, because it can settle this matter from its own resources. Canon law, on the other hand, only can have recourse to theology, that is, to the authority of sacred Scripture, which is true theology.

Beginning from the first, therefore, we say that this proposition is certain: the pope has supreme power in God's Church; [the papacy] is founded on Jesus Christ's institution [Matt. 16:18-19]. Indeed, our Savior, king of kings and lord of lords, although He could have disposed the Christian commonwealth on earth in diverse ways, nevertheless, willed and established that the government would not be popular, nor that of the rich, the powerful, the nobles, many or few, but only of one, promising Peter alone, *I will give to thee the keys* etc. [Matt. 16:19], offering him alone the promise, committing care of all the sheep, *Feed My sheep* [John 21:17]. Indeed, the comparative question with which the speech began, saying, *Simon, son of John, lovest thou Me more than these?* [John 21:15], convinces even bold spirits that the Lord spoke to Peter, as distinct from the [other] apostles present, to whom the comparison refers, and not [to him as] personifying them.

Although this text should suffice, since Peter was made universal shepherd then, when *Feed My sheep* was said in the present tense – not these or those but without distinction, so that it would include all, as Gregory notes² – nevertheless, in this context, glosses³ of Chrysostom, saying, "Leaving aside the others, He says to Peter alone: Be the leader in My place and the head of your brothers," and of Theophylact, saying that He entrusted the care of the world's sheep to Peter, and not to another, are not lacking. Pope Leo says in c. *Ita Dominus* [D. 19 c. 7], "The Lord so wished the sacrament of this gift to belong to the office of all the apostles that He placed [it] principally in most blessed Peter, the chief of all the apostles, so that from him, as from a head, He might pour out His gifts, as it were, upon the whole body." Also c. *Fundamenta* [vi 1.6.17].

Saint Thomas⁴ says that the Savior rightly made this arrangement; the Church's government is ordained in the best way. The best government, however, is that of a single person, which is

² Gregory I, *Epistolae*, v, cp. 20 PL 77 745-6

³ Thomas Aquinas, *Catena aurea* ad lo. 21, l. 3 *Opera* (Parma), vol. 12, pp. 462, 461.

⁴ *Contra gentes*, iv, c. 76 *Opera* (Rome), vol. 15, pp. 241-42

apparent from the purpose of government. Peace is that purpose, which consists of unity; and it follows that one is a better cause of unity than many, who can cause it only by coming together as one. The Church's government, therefore, is instituted so that only a single person rules the entire commonwealth.

You will note particularly what has been assumed, that Jesus Christ instituted such a government, so that you may stop the mouths of those arguing for a royal government instituted by a senate or a free people. Not the Church, or the Christian people or a council, however universal, but Christ Himself, Who lives and reigns, instituted such a government, so that Peter would be the vicar not of the Church but of Jesus Christ, as is apparent from the [Second] Council of Lyons in c. *Ubi periculum* [vi 1.6.3], where the pope is called Jesus Christ's vicar. Pope Pelagius says in c. *Quamvis* [D. 21 c. 3],⁵ "The holy Roman catholic and apostolic church was not set over the other churches by any synodal decrees; rather it obtained the primacy by the words of the Lord and Savior in the gospel." Many arguments to the point also are offered in the same chapter of *Contra gentes*⁶ concerning the pope's primacy and the need for it besides Jesus Christ in heaven,⁷ which you can see there.

The asserted proposition also is ratified by Martin V's authority in the Council of Constance,⁸ where it is defined, as is obvious in the bull condemning John Wyclif. These words also are found in the ecumenical Council of Florence under Eugenius IV, where the union of the Greeks and Armenians with the Roman church was accomplished,⁹ "We define that the holy Roman see and the Roman pontiff himself hold primacy in the entire world, that the Roman pontiff is the successor of blessed Peter, prince of the apostles and Christ's true vicar, that he is the head of the whole Church, the father and teacher of all Christians, and that full power of feeding, ruling and governing the universal Church was given to him by our Lord Jesus Christ in blessed Peter."

⁵ This actually is a text of Gelasius I

⁶ See above n. 4

⁷ Cajetan is arguing that, although Christ is the Church's true head, the papacy still is necessary.

⁸ *Inter cunctas*, Mansi 27 1212

⁹ COD 528.

From these things it is obvious not just that the aforesaid proposition is true but that the contrary is erroneous, as Saint Thomas says,¹⁰ and it pertains to the errors of John Hus condemned by Martin V in the Council of Constance.

Chapter II

Other opinions on the comparative powers of Peter, the first pope, and the apostles

Although the pope's power, first given to the apostle Peter, has been shown to be supreme, nevertheless, there are not lacking those who argue that the remaining apostles received equal power from Christ. So that truth may shine forth more clearly, know that two doubtful points are involved in this matter, which, if they are separated, will all the more reveal evident truth. One doubt is concerned with the equality of Peter's power and that of the other apostles; the other, the way of having power, whether all had it immediately from Christ, or Peter alone had it immediately from Christ, the others, however, from Him through Peter's mediation. There are two extreme opinions on each doubtful point.

The first is that of those who say that all the apostles had equal power immediately from Jesus Christ. They prove both [points] at once with multiple references to sacred Scripture. First, [they do it] from the fact that the Savior repeated to all the apostles what He had said to Peter alone [Matt. 16:19]; He said, *Whatsoever you shall loose on earth* etc. [Matt. 18:18]. And that saying *Feed My sheep* [John 21:17], said to Peter alone, was said to all the apostles in the [same] decree. Since feeding is to be done in three ways, by doctrine, life and correction, all of these things were said to all the apostles: first, *Teach ye all nations* [Matt. 28:19]; second, *You are the light of the world. . . . So let your light shine before men* etc. [Matt. 5:14-16]; third, *Whose sins you shall forgive* etc. [John 20:23]. Second, they cite Galatians [2:6, 9], where Paul says that, in Jerusalem, Peter and the other apostles *added* to him *nothing* of doctrine

¹⁰ *Contra errores Graecorum*, pars altera, cc. 32-5. *Opera* (Rome), vol. 40A, pp. 101-2

or power, as Saint Thomas says twice in that context,¹¹ but *they gave him the right hands of fellowship*, and that, in Antioch, he resisted Peter to his face, because he *was to be blamed* [Gal. 2:11]. These things do not happen between superior and subjects but rather between colleagues. Likewise, we read that the apostles sent Peter and John to Samaria [Acts 16:14]. Now it is obvious that the one sent is not greater than the one who sends, according to *The servant is not greater than his lord; neither is the apostle greater than he that sent him* [John 13:16].

These things are confirmed by the authority of the holy canons, first, one of Pope Anacletus in c. *In novo* [D. 21 c. 2], who says, "The other apostles, endowed in an equal partnership with blessed Peter, received both honor and power." Second, there is a text of Cyprian in c. *Loquitur Dominus* [C. 24 q. 1 c. 18], "The other apostles were what Peter was, endowed in an equal partnership of honor and power." Third, Jerome says concerning the epistle to the Galatians,¹² "Paul rebuked Peter, which he would not have dared unless he knew himself not to be unequal."

The other extreme opinion is that of those who disagree concerning both [points] and say that all the apostles neither received equal power nor received power immediately from Jesus Christ; but [they say] that Peter alone received power immediately from the Lord Jesus Christ, and that all having power from him are subject to him.

Concerning the way of having power, namely that Peter alone had it immediately from the Lord Jesus, commonly, indeed, they prove [this] from a text of Anacletus in c. *In novo* [D. 21 c. 2], "The pontificate in the Church of Christ was given first to Peter." Specifically, however, in regard to the power of orders, they do not prove this of priestly power, which all certainly received immediately from Christ, Who said at the Last Supper – in regard to the act of celebrating mass – *Do this for a commemoration of Me* [Luke 22:19], [and] in regard to the act of absolving in the sacrament of penance, when He said, *Receive ye the Holy Ghost. Whose sins you shall forgive, they are forgiven them* etc. [John 20:22–3]. They do, however, prove it of episcopal power, from the consecration of

¹¹ *Expositio super ep. ad Galat.*, c. 2, l. 2. *Opera* (Parma), vol. 13, p. 393.

¹² *Ordinary gloss* at Gal. 6:11, cited in C. 2 q. 7 c. 33.

James, Paul and Barnabas. James was ordained archbishop of Jerusalem by Peter, James and John [D. 66 c. 2]; Paul and Barnabas were ordained by others. It is said in Acts [13:2-3], *The Holy Ghost said to them, "Separate Me Paul and Barnabas" etc.*; and there is added, *Imposing their hands upon them, they sent them away*. The [ordinary] gloss says, "In the manner of those to be ordained." See also c. *Quod die dominico* [D. 75 c. 5].

In respect of the power of jurisdiction, however, since this appears nowhere more clearly than in Matthew [18:18], where the Lord Jesus says to the apostles, *Whatsoever you shall loose on earth etc.*, they prove this from what Christ said to Peter alone, *Whatsoever thou shalt loose etc.* [Matt. 16:19]. By that order of promises, they say, He indicated that the power of binding and loosing was conferred in a certain order, so that it would be derived by the others through Peter, as Saint Thomas says.¹³ The authority of Leo cited above from c. *Ita Dominus* [D. 19 c. 7], which says clearly that Christ made this arrangement so that His gifts would be diffused as if throughout the whole body from Peter himself, as if from a head, is brought to bear.

Concerning the equality of the apostles' powers, however, I find four interpretations reconciling with this Peter's authority over all [of them]. The first distinguishes the powers of orders and jurisdiction; and it says that all were equal in the power of orders, just as all bishops are equal in that power. The second says that all were equal in the power of jurisdiction, that is, similar, and it proves that equality should be taken for similarity from Leviticus [18:28], *Beware then lest [the land] vomit you also out, if you do the like things*. The [ordinary] gloss says, "That is, similar ones." The third is that of Saint Thomas,¹⁴ that they were equal in a certain way, as regards defense of the faith. He says, "Paul would not have rebuked Peter before all unless in some way he were equal as regards defense of the faith." The fourth is from the same author on the epistle to the Galatians,¹⁵ that the apostles were equal in the execution of authority. He says, "The apostle," that is, Paul, "was equal to Peter in the execution of authority, not, however, in ruling authority."

¹³ *Contra gentes*, IV, c. 76: *Opera* (Rome), vol. 15, pp. 241-2, *In II Sent.* D. 24 q. 3 a. 2 q. 3 *Opera* (Parma), vol. 7, pt. 2, p. 902.

¹⁴ II^a II^{ae} q. 33 a. 2 ad 2: *Opera* (Parma), vol. 3, p. 136.

¹⁵ *Expositio in ep. ad Galat.*, c. 2, l. 3 *Opera* (Parma), vol. 13, p. 395.

Chapter III

Reasons for the opinion that the other apostles were subject to Peter

Having cited the two extreme opinions, a middle way suggests itself to me as the one to be followed. One must say that the apostles can be compared among themselves in two ways: first, in so far as they were apostles, and so all were equal; in another way, in so far as they were Christ's sheep, set apart by Him while he was present here bodily, and so Peter alone is the shepherd, and the remaining apostles sheep under his care. Because it does not suffice to say this, but it is necessary to declare and prove it to be so, as we say, I declare first the dignity and power of the apostolate.

It is written, first, that, *Calling together the twelve apostles, [Jesus] gave them power and authority over all demons, and to cure diseases. And He sent them to preach the kingdom of God, and to heal the sick* [Luke 9:1-2]. It is said that the Lord said to them, *Going therefore, teach ye all nations; baptizing [and] teaching them to observe all things whatsoever I have commanded you* [Matt. 28:19-20]. In the first letter of Paul to the Corinthians [12:28] it is read that, *God hath set . . . first apostles . . . in the Church*, where the interlinear gloss says, at the word *first*, "In dignity and time," and, at the word *apostles*, "Ordainers and judges of all."

In the *Decretum* is said from Augustine,¹⁶ "*Instead of thy fathers, sons are born to you. The fathers who are sent are the apostles; sons are born for the apostles and made bishops.*" In the ecumenical Council of Florence under Eugenius IV these words about the minister of confirmation are found among the documents of the faith,¹⁷ "No one but a bishop should confer this," that is, confirmation, "because it is read of the apostles alone, whose place the bishops hold, that they gave the Holy Spirit by the laying on of hands."

Saint Thomas says of the aforesaid words from the first letter to the Corinthians,¹⁸ "The greater ministers in the Church are the apostles, to whose office three things pertain. The first of these is the authority to govern the faithful people, which properly pertains to the office of the apostolate; the second, the ability to teach; the

¹⁶ D. 68 c. 6 actually is a text of Urban II. It cites Ps. 44:17.

¹⁷ COD 544.

¹⁸ *Expositio in I ad Cor.*, c. 12, l. 3: *Opera* (Parma), vol. 13, p. 278.

third, the power of working wonders for the confirmation of doctrine." Afterwards he added that the third of these is ordered to the second, the second to the first. He adds, "God placed first the apostles, to whose rule He committed the Church." He proves this in three ways: first from Luke [22:29], *I dispose to you, as My Father hath disposed to Me, a kingdom*; second, from the Apocalypse [21:14], *And the wall of the city had twelve foundations, and in them, the twelve names of the twelve apostles*; third, from Romans [8:23], *Ourselves. . . who have the firstfruits of the Spirit*. Greater grace is given to the greater rank.

From all of these things it is easy to see that the apostles, in so far as they were apostles, had not just the power of orders but that of jurisdiction. The authority to govern the Church, which is proper to the apostolate, does not exist without the power of jurisdiction. If you add to this that they do not have the apostolate from Christ with Peter mediating but immediately from Jesus Christ Himself, according to John [20:21], *As the Father hath sent Me, I also send you*, and Matthew 1[:1], Mark 3[:4] and Luke 6[:13], it is obvious that He Himself made them apostles. Paul proves himself an apostle because sent and taught *not of men, neither by a man* [Gal. 1:1]. Thus you resolve both doubts, that is, concerning equality of power and the way of having it, that is, that the apostles were equal simply in the authority of the apostolate and that they had this power, as [they had] the apostolate, immediately from Jesus Christ.

I said "simply," because nothing in itself prohibits one apostle from having a more worthy apostolate than another, as Paul did than the others. According to the interlinear gloss at *Who raised Him from the dead* [Gal. 1:1], speaking in the person of Paul, "So [the Father] appointed me through Christ [now] immortal, [and thus] more worthy than the others appointed by Him [while still] mortal." The marginal gloss, drawn from Augustine¹⁹ in the *Liber retractationum*, [derives] from the same root.²⁰ For this reason, Saint Thomas²¹ says in that context that Paul is imprinted on the right, Peter on the left, on papal bulls. That dignity on account of the status of the One Who called, because He was immortal, does not

¹⁹ *Retractationes*, I, 24. PL 32 622

²⁰ Literally *ex eadem radice*

²¹ *Expositio in ep. ad Galat.*, c. 1, l. 1. *Opera* (Parma), vol. 13, p. 383.

make the apostle who was called greater simply, but only in this respect.

If we consider that those very apostles were the sheep of Christ, by Whom it was established that there would be *one fold and one shepherd* [John 10:16], thus Peter is found to be that one shepherd to whom was said, *Feed My sheep* [John 21:17], not just these or those; and so the rest are found to be the sheep of one fold. Peter, made shepherd, at once, as a sign of this, assumed responsibility for John, asking concerning him, *What shall this man do?* [John 21:21].

How two things can be verified at once, that all the apostles were equal in authority to govern the Church and had that authority immediately from Jesus Christ, and that Peter alone was instituted as shepherd of the universal Church and was greater in authority than the other apostles, so that power was derived from that head throughout the whole of the Church's body, appears difficult at first glance; but, if we consider these things minutely, we will see that all of them, as a matter of fact, are true at the same time. For you must know that it is possible for some things to happen in two ways, that is, naturally – as when a man begets a man or a sick man is made well by the force of nature – and supernaturally, as when man was created by God or a sick man is made well by a miracle. So too in the Church something can happen in two ways, in an ordinary way, as when a bishop is created in accordance with legal procedure, or by a special grace from a prince, as if someone were immediately made a bishop, as happened in the case of Ambrose.²² Our prince, Jesus Christ, used both ways in the primitive Church. For, when establishing the ecclesiastical government to be observed as a perpetual regular law, He established a monarchic government, that is, the principate of one, and made Peter the one head of the whole body of the Church, from whom the power of jurisdiction and orders was to be derived regularly by all. All of the sacred authors intended this, since they hand down the doctrine of the dependence of all on Peter.

However, conferring [something] as a special favor, just as He preempted Peter in conferring the power of orders, when the Lord Himself by Himself made the other apostles priests at the Last

²² Ambrose was acclaimed bishop of Milan while trying to calm the Catholic and Arian factions at odds over an election to the see.

Supper, confessors after the Resurrection and [ministers of] the sacrament of confirmation, so He preempted him in granting the authority to govern, order and judge the Church, as is obvious from the texts cited. Just as it does not hinder the superiority of Peter himself, the head, that the others did not have the power of orders from him, because this was not from a defect in Peter's power or an exemption of the others from him, but from a preemptive grant by a superior, Who first gave to subjects as a favor what ordinarily must be given to them by Peter, so it does not affect the excellence of Peter's power of jurisdiction over all that the Savior, as superior, gave that power, which they would have received from Peter in the ordinary way, to all his subjects as a favor.

So the manifold means of giving and receiving power clarify the truth. All the Church's power begins in and from Peter; and it is derived from him by the whole Church in the ordinary way; on the other hand, some persons subject to Peter received immediately from Christ, by means of a preemptive favor, many powers which they would have received from Peter. So the Church, one under only one head, namely Peter, has all the apostles holding the powers of orders and jurisdiction immediately from Christ through preemptive favor; and it has Peter alone as head of the other apostles and all [others], from whom the powers of orders and jurisdiction ordinarily must be derived to the other apostles and all [others]. Therefore, things which seemed contrary to one another are true at the same time.

So that what was said may shine forth more clearly, know that there are five differences between the power of Peter and that of the other apostles. The first is in the way of giving and receiving power, because it was given to Peter ordinarily, to the others, however, by a special favor, as has been explained. The second is in the office, and it follows from the first: Peter was made Jesus Christ's vicar general; the others, however, were made, as it were, His ambassadors or delegates, according to Paul, *We are ambassadors for Christ* [2 Cor. 5:20], and *I am an ambassador in a chain* [Eph. 6:20]. The noun "apostle," derived from "mission," means this, although, by stretching the term, they are called vicars in the preface [of the mass for apostles]²¹ The third is in the object of power, that the

²¹ *Roman Missal*, Preface for apostles.

other [apostles'] power of jurisdiction was not over each other but over others. Peter's power, however, was over others and over those remaining apostles, since Christ said to him alone, *Feed My sheep* [John 21:17], of whose number the apostles undoubtedly were. There Chrysostom says to Peter, in Christ's person,²⁴ "Be leader in my place and the head of your brothers." The fourth is in perpetuity of power, because the power of the others had to end with their lives, since it was given only to their own persons for their own persons and not for their successors. Peter's power, however, lasts to the end of the world, because it was given to him in his own person not just for himself but for all his successors. The holy doctors express this in other words, saying that it was given to Peter as personifying the Church. From this difference arises the fact that no one is the successor of John or James, nor even of the apostle Paul, in the authority of the apostolate for the Church's universal government, as the apostles governed [it] everywhere, whereas bishops only succeed to the power of orders and the rule of one particular church; but there is a successor of Peter alone, and he is called "pope," as is obvious from the texts cited above. The fifth and last for now is in the very essence of power, since the authority given to the apostles in common by virtue of the apostolate was a sort of executive power, wherefore Saint Thomas called it "governing authority." (Government implies execution.) The authority given to Peter alone, however, when he was made pope, when Christ said, *Feed My sheep* [John 21:17], is the power to command; and, therefore, Saint Thomas called it "ruling authority."²⁵ According to what Saint Thomas said,²⁶ "Paul was equal to Peter in execution but not in ruling authority"; and he says that "the Church's government," which implies execution, not ruling authority, which implies sovereignty,²⁷ was committed to the apostles.²⁸ Accordingly, in the preface [of the mass for apostles],²⁹ they are not called vicars absolutely but vicars for executing [the work], the Church saying to God concerning the apostles, "Whom [You

²⁴ See above n. 4.

²⁵ See above n. 18.

²⁶ See above n. 15.

²⁷ Literally *imperium*.

²⁸ See above n. 18.

²⁹ See above n. 23.

appointed] vicars of Your work," as if it said, "vicars for executing [it]."

Nevertheless, because one [person] can be replaced on occasion with another, if equality were found even in ruling authority, it would be proper to explain it as executive power. The Savior gave to all the apostles in common [power] to carry out, among those to whom they were sent, everything Peter was able to, for instance, instituting churches and bishops, teaching, excommunicating etc. To Peter, however, He gave the power unconditionally over all. Thus Paul, in a certain sense, an executive sense, was equal to Peter in regard to defense of the faith, as was said in the *Secunda secundae*.³⁰

If you do not penetrate this difference between executive and commanding power, see it in this example. Bishops have the office of preaching; and the Friars Preachers too have the office of preaching, since they were instituted for it, but differently, because bishops do this on their own authority, the Friars Preachers, however, on the authority of the pope, who delegates to them in office this power to preach. So concerning the power to govern the Church, it was in Peter and the other apostles proportionately. Peter governed by the proper authority of the office of his pontificate; the other apostles, however, from a privilege of the Lord, Who delegated the office of governing to them.

Now it remains to reply to the objections in the following chapter.

Chapter IV

Answers to objections to the conclusion reached regarding Peter's primacy over the other apostles

So that the objections may be met in due order, the first objection stated will be answered first, and so on one after another.

One says, therefore, to the authority cited from Matthew 18[:18] that two things are to be noted in the words said to Peter alone in chapter 16[:19] and the words said to all in chapter 18[:18], namely the order and the power given. The order was that *Whatsoever thou shalt loose* was said first to Peter and to the others thereafter, and

³⁰ See above n. 14

from this order the Lord implied the ordinary progression of the power of loosing and binding, that it had to be derived by others from Peter on account of the unity of the Church's head and body, as is apparent from the texts cited from Saint Thomas.¹¹ The power given, as was said, was pertaining to the Church's governing power and equal in the said way; and by this the Lord showed that He wished to give it to the apostles by means of a gracious preemption. Both points taken together, therefore, rather show that what we have said was true.

To that text of John [20:23], although it may have been argued badly that jurisdiction for correction was committed to all through *Whosoever sins you remit*, since these words pertain to correction in the forum of penance, nevertheless, because it could be argued from that text of Matthew 18[18], *Whatsoever you shall loose*, where the Savior speaks of the external jurisdiction by which the one not heeding the Church is become like a heathen and a publican, the answer is that, in truth, the Savior said those words, *Feed My sheep* [John 21:17], to Peter alone, as was proved. If something similar is found to be committed to the apostles, namely the pastoral office, on that same foundation it could be said that Christ's sheep were committed to no one but Peter without distinction, so that all should be included; particular groups of sheep, however, were entrusted to the other [apostles], at least with this limitation, that some were ruled by the other apostles, some by Peter. And therefore, the others could be called delegated shepherds, according to the words of the preface [of the mass for apostles],¹² "Whom" You appointed vicars of Your work to lead it¹³ [the Church] as shepherds," as if it said, "You gave the flock the apostles to lead it [the Church] as the shepherds, as vicars of Your work, that is as envoys in Your place for the execution of Your work." Peter, however, was made shepherd absolutely and universally when Christ said to him, *Feed My sheep* [John 21:17]. Accordingly, to say it in one word, more was given to Peter by these words than by any others [said] to the other [apostles] taken together, because the authority of universal rule is contained here simply, although the whole

¹¹ See especially n. 13

¹² See above n. 23

¹³ Reading *Quod* as *Quos*

¹⁴ reading *eudem* as *eidem*

pastoral office was conceded to all the apostles in an executive sense.

To the authority from Galatians [2:6, 9], it is apparent already that Paul received "nothing of doctrine or power" from Peter, not from a defect of power in Peter but from a gracious preemption, by which he had power and knowledge from Jesus Christ, as he himself says in Chapter 1. He received *the right hands of fellowship* on account of the unity of the faith which they taught, for we are not just fellows but brothers in the unity of faith, according to *All you are brethren* [Matt. 23:8]. How he resisted him *to the face* [Gal. 2:11] as an equal already has been explained, that this is understood as concerning equality in execution of the office of defending the faith.

To what is said in the Acts of the Apostles [16:14], that Peter and John were sent, the answer readily appears from the theologians at book 1 D. 15 of the *Sentences*, that it is not necessary for the one sending to be greater than the one sent; notwithstanding, they are said to have been sent out by the counsel and love, not by the authority, of the others.

To the texts of Anacletus [D. 21 c. 2], Cyprian [C. 24 q. 1 c. 18] and Jerome,³⁵ what must be said already is obvious from the foundation already laid. And so, learned man, since everything has been resolved, not by desultory arguments, but on a single basis, you have evidence that this doctrine is true. All things fit together, and it is necessary to resolve all individual difficulties from what a thing is, as the Philosopher says in the *Physics*.³⁶

On the same basis too what we have indicated regarding the position of the others [holding extreme opinions mentioned in Chapter II] about the way in which [the apostles] had power immediately from Christ is obvious. It is apparent, I say, that, concerning the power of orders, it does not matter whether Jesus Christ preempted Peter in making all the apostles bishops, as the [ordinary] gloss at c. *Porro* [D. 66 c. 2] seems to say against the text, or whether He left ordaining them to Peter, as the texts cited above imply. If He deferred this to Peter, He did not preempt the regular progress of the power of orders in the established course; and, if He ordained them by Himself, He did this by a gracious preemption, not by revoking the regular arrangement of orders. Concerning the power

³⁵ See above n. 12

³⁶ Aristotle, *Physics*, IV, 4

of jurisdiction, however, it already has been said that by a gracious preemption He, Who established that there would be in the order of giving or promising a regular process of its derivation by others from Peter, by Himself gave its execution to all of them, as the texts cited teach.

From all these things it is obvious that Peter alone is the prince, head and shepherd of the apostles, that the other apostles were subject to him like sheep to a shepherd, and that they were assigned by him in the regular way the powers of orders and jurisdiction, although they had equal executive power immediately from the Lord by a gracious preemption. All, however, had equal episcopal power of orders immediately from the Lord or by mediation.

If you understand what has been said perspicaciously, you will see that Peter, as apostle and pope, simply was greater than the others. Linus, Cletus and Clement, nevertheless, were not in that relationship to John the apostle and evangelist, who still was alive; but, in a certain sense, they were equal, both exceeding and exceeded. They were equal in the executive power of ruling the Church, in so far as John could do, on the basis of his apostolate, whatever the pope could do. The pope exceeded in ruling authority, just as was said concerning Peter's authority, because he, not John, was [Peter's] successor and vicar of Jesus Christ. He was exceeded in the dignity of the apostolate, because John was an apostle; Linus or Clement, however, was not. Because composing books of sacred Scripture was conceded to the apostles, not the pope, when the Lord said to them that the Holy Spirit would teach them all things and *all truth* [John 16:13], and Augustine³⁷ says that Luke and Mark wrote at a time when they had earned the approval of those apostles who were still alive, therefore, John's decree would have prevailed over Pope Clement's in the doctrine of faith and morals, just as John's gospel would now prevail over the decree of any pope and of the whole Church. Nor is any obstacle imposed by that text of Augustine,³⁸ "I would not believe the gospel unless the Church's authority admonished me," because John himself, and, similarly, any apostle, was the Church by Jesus Christ's authority, John himself hearing witness to this when, speaking of himself, he says, per-

³⁷ *De consensu evangeliorum*, I, c. 2 CSEL 43 3-4

³⁸ *Contra epistolam Manichaei*, V, c. 6 PL 42 176.

sonifying the Church, which he did by Jesus Christ's authority, *We know that his testimony is true* [John 21:24].

From these things it is apparent that, of these two extremes, that of saying that all the apostles were instituted by Christ in the same way as his vicars, and that of saying that Christ gave the power of jurisdiction immediately to Peter alone, neither seems true, although the second need not be rebuked but expounded. Only the middle way which we have declared, however, is true, that Peter alone had the vicariate of Jesus Christ and only he received the power of jurisdiction immediately from Christ in an ordinary way, so that the others were to receive it from him in the ordinary course of the law and were subject to him. The second opinion is verified in this way. At the same time, Jesus Christ, lord of the law, delegated to the other [apostles] preemptively an equal power of execution, as was said; and the first opinion has that much truth. Follow, therefore, the middle way.

Chapter v

The arguments of those holding that the universal Church or universal council has power over the pope unconditionally, so that the pope is subject to it

Having examined the comparison of the pope's power to the apostles in regard to their apostolate, now the pope's power must be compared to the power of the universal Church or universal council, first in absolute terms, later, as we promised, in certain events and cases. Since opposites placed next to one another shine forth the more, I will give first the primary reasons in which there is force, by which it is proved that the pope is under the judgment of the Church or universal council. And so that the terms "Church" and "council" would not be repeated together constantly, let them be taken for the same thing, since they are distinguished only as the representative and what is represented.

These men, therefore, lean on the aforesaid constitution first found in the acts of the Council of Constance under John XXIII in the year of the Lord 1415, where we read thus in the fifth session, held on the sixth day of the month of April,³⁹ "This holy synod,

³⁹ This is one version of the decree *Haec sancta* cited above in n. 3.

gathered legitimately in the Holy Spirit, constituting a general council and representing the catholic Church, declares that it has power immediately from Christ which anyone of whatever state or dignity he be, even the papal one, is bound to obey in those things which pertain to the faith, extirpation of the said schism and reform of the said Church in head and members." Another decree is added with these words,⁴⁰ "Likewise, it declares that, anyone of any condition, state or dignity, even the papal one, who contumaciously scorns obeying the mandates, statutes, ordinances or commands of this sacred synod and any other general council legitimately gathered made or to be made concerning what has been said or those things pertaining to them, unless he comes to himself, shall be subjected to a fitting penance and punished properly, by having recourse, if need be, to the law's other aids." Based on these, three things are held: first, that the universal council has authority immediately from Jesus Christ; second, that the pope is bound to obey it; third, that a synod has coercive power over the pope when it subjects him to punishment.

The same decree is confirmed by the Council of Basel, celebrated in the year 1431 under Eugenius IV, where these decrees were renewed in Sessions II and XVIII.⁴¹

Next it is confirmed in the condemnation of John Wyclif's errors in Session VII of the same Council of Constance,⁴² confirmed there afterwards by a bull of Martin V ratified there with the approval of the holy council, where, among others, this article was condemned:⁴³

It is not necessary for salvation to believe the Roman church to be supreme among the other churches [is] an error whether by the Roman church is understood the universal Church or the general council, or in so far as it would deny the primacy of the supreme pontiff over other particular churches.

From that condemnation it is held that the council truly is the supreme [church] above all the churches; and, consequently, it is superior to the Roman church, which is one of [those] churches.

⁴⁰ This is the other version of *Haec sancta* cited above in n. 3

⁴¹ COD 457, 477.

⁴² COD 411-16

⁴³ *Inter cunctas*, Mansi 27.1209.

This is confirmed to be the fathers' intention, because they make a distinction between the council's primacy and the supreme pontiff's, since they say of the council simply that it is supreme among the other churches; of the supreme pontiff, however, they say that he has primacy in respect of particular churches.

They also found this on the gospel and the doctors in so far as *the keys of the kingdom of heaven* [Matt. 16:19], the pastoral office and the power of binding and loosing, were given to the Church in two ways, authoritatively and for a purpose. That the Church itself has it authoritatively is witnessed, first, in Matthew 18[:18], where the Lord, after saying, *Tell the Church. And if he will not hear the Church, let him be to thee as the heathen and the publican* [Matt. 18:17], added immediately, *Amen I say to you, whatsoever you bind upon earth, shall be bound also in heaven; and whatsoever you shall loose on earth, shall be loosed also in heaven*. There, manifestly, He gave this universal power to the Church. The Lord added these words, as Jerome and Hilary say in this context,⁴⁴ lest the one who did not heed the Church would be regarded as a heathen and a publican by private authority; but it was conferred on the Church by divine authority.

Next Augustine on John is cited, as is found in c. *Quodcumque* [C. 24 q. 1 c. 6], where it is concluded that Peter, when he received the keys, represented holy Church. Likewise, he says, speaking of the power of binding and loosing, "Peter received this with all of them, as if he personified this unity."⁴⁵ Likewise, he says,⁴⁶ "Peter personified the whole Church and, therefore, merited to hear, *I will give to thee the keys of the kingdom of heaven*. It was not one man but the unity of the Church which received these keys." And,⁴⁷ "Not without cause Peter, among the apostles, personifies the catholic Church. The keys were given to Church when they were given to Peter. When *Lovest thou Me? . . . Feed My sheep* [John 21:17] was said to him, it was said to all."

This is confirmed by reason: because the Church has no less right to the keys given to it by Jesus Christ than to the temporal goods given to it by Christ's faithful; but lordship of temporal possessions

⁴⁴ Thomas Aquinas, *Catena aurea* ad Matt. 18, l. 5: *Opera* (Parma), vol. 11, p. 215.

⁴⁵ *In Iohannem*, tr. 118.4 CC 36.656-7.

⁴⁶ Sermon 295, 4.2. PL 38 1345.

⁴⁷ *De agone christiano*, xxx,2 CSEL 41 134-5.

is vested principally in the Church, since even the pope is not lord but steward of the Church's possessions, as Saint Thomas⁴⁸ says; therefore, the Church has the power of the keys to a greater extent than the pope. This is confirmed, further, because, since that which is right is judge both of itself and of what has gone astray, and since the universal Church is right to such an extent that it cannot err, as is obvious, whereas the pope can err even in faith, as is obvious from c. *Si papa* [D. 40 c. 6], it follows that the Church has the keys more excellently than, and with precedence over, the pope, which, indeed, it has as the pope's judge.

That the keys were given to the Church for a purpose is apparent from the power which the Lord hath given. . . unto edification, and not unto destruction [2 Cor. 13:10]. Saint Thomas⁴⁹ expressly holds that prelates' power of jurisdiction is for the subjects' good; and, therefore, no injury is done to an inferior prelate, like a bishop, when an abbot is exempted from [his authority] for the Church's good. It follows from these things that the pope exists for the Church, and not the converse; and, consequently, the keys were given to the pope with a purpose, for the Church.

Third, they found this on principles naturally self-evident. They say that every whole is greater than one of its parts; the universal Church is the whole, and the pope is a part; therefore, the universal Church⁵⁰ is greater than the pope. The argument is valid, and the major premiss is a self-evident principle. The minor is from the apostle, *We being many, are one body. . . , and every one members one of another* [Rom. 12:5], and Jerome says on this point in c. *Legimus* [D. 93 c. 24], "If authority is required, the world is greater than the City [of Rome]."

Last, they found this on the fact that the Church was constituted by the Lord Jesus Christ the pope's judge in a case of sin, as is obvious from *If thy brother shall offend against thee etc. tell the Church. And, if he will not hear the Church, let him be to thee as the heathen and the publican* [Matt. 18 15, 17]. From this authority, although it speaks of a case of sin, because it begins, *If he shall offend. . . ,* and, therefore, does not pertain to the present chapter,

⁴⁸ *ti^u u^o q^o 100 a 1 ad 7 Opera* (Parma), vol. 3, p. 363.

⁴⁹ *Contra impugnantes Dei cultum et religionem*, c. 4 *Opera* (Rome), vol. 41A, pp. 68-85.

⁵⁰ Reading *ecclesiae* as *ecclesia*

in which the pope is compared to the Church not in particular cases but unconditionally, nevertheless, they wish to draw the conclusion that the Church unconditionally is superior to the pope, both because the ordinary judge with punitive power over anyone also is his ordinary judge unconditionally, and because the judge and the law do not differ except in as much as one is animate and the other inanimate, as is obvious from the *Ethics*.⁵¹ Now, to the same legal authority which exercises one form of legal action (namely, punishing) the other three, commanding, forbidding and permitting, pertain; therefore, all judicial acts will pertain to the authority of the same ordinary judge to whom the power to punish belongs etc. And so, since the Church is the pope's ordinary judge in punishing, it follows that it will be his judge simply in commanding, forbidding and permitting. These are the law's four acts, as you have them from Saint Thomas.⁵²

This is confirmed by the authority of the sacred canons. Pope Zosimus says in c. *Contra statuta* [C. 25 q. 1 c. 7], "Not even this see's authority can concede anything against, or change, the statutes of the fathers." In c. *Prima salus* [C. 25 q. 1 c. 9] is said, "The beginning of salvation is keeping the rule of right faith and deviating not at all from the things established by the fathers." From these it is held both that the pope is not superior to the council's power, and that the statutes of the fathers, not [those] of the pope, pertain to the beginning of salvation. There also are many other things, which are said about this in the same part of [Gratian's] *Causa* [C. 25 q. 1], which are omitted for brevity's sake.

Chapter vi

In what sense the question of the comparative authority of pope and council is a matter of doubt

In order to clarify this comparison, the terms, that is, what is understood by the words "church" and "universal council," must be elucidated, lest the whole disputation be in vain.

The universal Church can signify two things in what is proposed: either the whole ecclesiastical body, made up of all the members,

⁵¹ Aristotle, *Nicomachean Ethics*, v,7.

⁵² I^o II^o q. 92 a. 2 *Opera* (Parma), vol. 2, p. 338

even including the head, that is, the pope; or all of the Church's remaining body distinguished from the head, the pope. The universal council too is understood either with its head, the pope, whether [present] personally or authorized by his command, or without the pope in either of those ways. So three comparisons must be examined. The first is between the pope and the Church or the council entirely without the head, the pope. The second is between the pope and the Church or the council with the head personally. The third is between the pope and the Church or the council authorized by the pope.

Since all of these comparisons suppose the pope to be head of the universal Church, and not just of the individual members, as the enemies of truth gloss it, this must be demonstrated first.

First, from the authority of that Council of Constance itself both before and after Martin V's election, as is obvious in Session XV⁵³ and Martin V's bull,⁵⁴ where John Hus' proposition: "Peter neither is nor was head of the holy catholic Church" was condemned, together with another one: "There is not a particle of evidence that there needs to be one head ruling the Church in spiritual matters, which is permanently involved with the Church Militant." Here the view is expressly condemned that Peter was not head of the catholic Church, "catholic" heing the same as "universal." Similarly, the view is condemned that there need not be, aside from Christ, Who is in heaven, one head to rule the Church, dealing with it directly, which is the pope, as Saint Thomas⁵⁵ demonstrates at great length.

Jerome⁵⁶ too says, "Peter means the foundation of Christ's Church; Cephas means the principate and head of the body of Christ." If Peter is the head of the body of Christ, then [he is the head] of the whole Church collectively, according to the apostle, *We, though many, are one body in Christ* [Rom. 12:5]. Pope Marcellus expressly says in c. *Rogamus* [C. 24 q. 1 c. 15] that Peter is the head of the whole Church. In the [Second] Council of Lyons, Gregory X, as is found in c. *Ubi periculum* [vi 1.6 3], calls the pope vicar of Jesus Christ, successor of Peter, the universal Church's ruler and

⁵³ COD 426-31 at 429, art. 7

⁵⁴ *Inter cunctas*, Mansi 27 1209

⁵⁵ See above n. 4.

⁵⁶ Actually, Isidore of Seville, *De ortu et obitu patrum*, LXVIII, 113. Pl. 83 149

the guide of the Lord's flock. Also, according to the procedure of the Roman church, when the pope signs any hull about universal business, he says, "I N., bishop of the catholic Church. . ."

From these [points] it is obvious that the sophistry saying that the pope is head of the Church's members and not of the Church itself at the same time is erroneous. For in what terms should or could this be expressed better by the saints than through collective and consistently appropriate names for the whole? They call the Church, the flock, the body of Christ, explicating it as whole, universal, catholic. Let those [who object] say what [they think] should be said, let them be refuted even by the words of those Councils of Constance and Basel, where the Church is signified collectively in the same words, since "This holy synod, representing the universal or catholic Church" is repeated there a thousand times.

Concerning the first comparison, therefore, between the pope and the universal Church without its head, what must be said is clear and evident, namely that the pope is superior to it, both because it is a body vastly diminished by being cut off from its principal member and, for that reason not the universal Church (which implies perfection), and because *God's works are perfect* [Deut. 32:4], and from this it would not befit divine providence to locate supreme authority in so imperfect a body, which, rather, is dependent upon the head.

If someone insists that, when the apostolic see is vacant, the universal Church still exists, even without the pope as its head, the answer is that the universal Church exists only imperfectly, in such a way that this imperfection is a condition diminishing "the universal Church," just as a beheaded body diminishes an intact body. The universal [body], after all, includes within itself all its office-holding members, the chief of whom is the head. Accordingly, the Church at such a time is headless and without its supreme part and power. Whoever denies this falls into the error of John Hus, denying the necessity of a head of the Church, which was condemned by Saint Thomas and by Martin V with the Council of Constance.⁵⁷ And if someone took the view that the universal Church in this sense [without its head] has power immediately from Christ and is represented by the universal council, he would err intolerably, as is

⁵⁷ See above nn. 55, 54.

obvious from the texts cited and as will become more apparent further on.

Concerning the second comparison at the other extreme, between the pope set on one side and the whole Church, that is, even including the pope, on the other, it is said that the pope with the rest of the Church does not have greater power of spiritual jurisdiction than he has by himself, because his power contains in itself the powers of all the rest, as their universal cause. There is no power of jurisdiction in the Church which is not in the pope, as is inductively obvious.

Even the power to elect the pope is in the pope's power. This is obvious both from the case of Peter, who chose his successor, as John III says in c. *St Petrus* [C. 8 q. 1 c. 1], and from the fact that the pope ordains the exercise of the power to elect, determining when and how an election should be held, and, what is more important, determining the location of that power, when he established that election belongs to at least two thirds of the cardinals. This is proved from c. *St papa* [D. 40 c. 6], where it is said that the whole body of the faithful recognizes that its salvation depends most, after the Lord, on the pope's good condition. Pope Leo says in c. *Ita Dominus* [D. 19 c. 7], "The Lord wished the sacrament of this gift to belong to the office of all the apostles, so that He placed [it] principally in most blessed Peter, chief of all the apostles, that from him, as from a head, He might pour out His gifts, as it were, upon the whole body." It is absolutely obvious in that passage that all the rest of the Church's body is allocated power by the pope as if by a head.

Understanding the universal Church thus, it follows that it has authority immediately from Jesus Christ; nothing mediates between it and Jesus Christ. But it is not held from this that, by comparing some members, like a body without a head, to Christ, they have power immediately from Him; but it suffices that the whole has it immediately from Jesus Christ, a certain order, however, being maintained among the parts. Thus our Savior diffused power first to the head and through the head to the rest of the body, according to what was and will be said. Accordingly it is obvious that the whole Church does not have power over the pope alone; and, conversely, that the pope with the rest of the Church does not make up [a body] greater in power, but rather several powers.

Concerning the third comparison, which is the middle, that between the pope and a council authorized by the pope, from what has been said what must be said is easily gathered, namely that [the council] is not of greater authority than the pope, by whom alone it can be authorized, as is obvious from all of D. 17 and c. *Significasti* [x 1.6.4], which states that "All councils both were held by and received power from the authority of the Roman church."

Having made the aforesaid three comparisons according to the truth, a fourth is added as an opinion; and it is [a comparison] between the universal Church as a community, whether the pope, its leading part, rather than the source of authority in it, wishes to be present in it or not, on the one side, and the pope on the other. Because the comparison is between different things, and because there is no subjection, nor (speaking properly) justice, between something and itself, when they say that the universal Church is superior to the pope, they understand one of two things. Either they understand by the universal Church the congregation of the faithful, as a community, whether the pope, its leading part, wishes to be present or not; or they understand it to be the congregation of the faithful gathered by the authority of the head, the supreme pontiff, so that its being gathered depends on the pope alone in the universal Church: indeed two things in a council depend on the pope, its being assembled and its representing the universal Church. What they mean by these arguments is that, excluding the pope's authority, once the Church or the council has been assembled, a comparison may be made between the power of the Church or the council on one hand and [that of] the pope on the other. Therefore, our further discussion of the Church or council as distinct from the pope will be concerned with the Church or council apart from the pope's authority after the assembly has been summoned legitimately.

The argument against those saying that the Church has authority over the pope is that that position perverts the constitutional order of the Church's government. For it is necessary, according to them, that the Church's government be a democratic or popular one, in which all authority resides with no one person but with the whole community, just as happens in a [cathedral] chapter, as Saint Thomas says.⁵⁸ This is what they mean when they say that the

⁵⁸ *In IV Sent.* D. 19 q. 1 a. 1 q. 3 ad 3; *Opera* (Parma), vol. 7, pt. 2, p. 825

Church, as if it were a free community, has power over the pope, as if he were a king, as the Roman senate and people had over the emperor. And because they do not regard this as unsuitable in itself, although they seem to abhor the words [democratic and popular], therefore, by insisting on the substantive point, it must be demonstrated that Christ gave the plenitude of ecclesiastical power not to the community of the Church but to a single person in it.

Chapter VII

That the pope is above the power of the universal Church and the general council apart from the pope

The foundation of this truth is derived from the authority of our Lord Jesus Christ, where He says to Peter alone, as distinct from the other [apostles], *Feed My sheep* [John 21:17], as was cited in Chapter 4, thus establishing the monarchic government of the Church.

If someone replies, absurdly, that Christ said to Peter, *Feed My sheep*, not My Church, as if He made him shepherd of the individual sheep, not of the Church itself, which signifies the whole arising from all the sheep, this is excluded by what is said in the prayer,⁹⁹ "God, shepherd and ruler of all the faithful, Your servant N., whom You wished to be the shepherd, leading Your Church. . . ." In the [Second] Council of Lyons, in c. *Ubi periculum* [vi 1.6.3], the pope is called "ruler of the universal Church" and "guide of the Lord's flock," where it is obvious that, in regard to the Church and the flock, which these collectives signify, and not just in regard to individuals, the pope is shepherd, ruler and guide. Because this is the last refuge of these little foxes that despoil the Lord's vineyard [Cant. 2:15], consequently, one must take care, therefore, in all texts to be cited, to show that the collective whole or community is not set above, but is subject to, the pope.

More fully: the Savior says, *Other sheep I have* etc. [John 10:16]; and He adds, *There shall be one fold and one shepherd*. It is certain that the fold does not signify the sheep, but the single thing containing the sheep; and [this is held] on the basis of the interlinear gloss at the beginning of that chapter, at the words, *He that entereth not*

⁹⁹ *Roman Missal*, "Prayer for the Lord Pope."

by the door into the sheepfold [John 10:1], expounding "*the sheepfold*, that is, into the catholic Church." It is held that by the one fold is understood the one Church made up of Jews and gentiles. From this authority one argues thus: the Church, as one entity made up of Jews and gentiles, is the fold; and Peter, to whom was said, *Feed My sheep*, is the one shepherd of this fold; therefore, the one Church is not above the pope, but under him, as the fold is under the shepherd.

This is confirmed: because the Church or the council, distinguished from the pope, is either the sheep or the shepherd. Not the sheep, because the Lord says that one fold will be established from both groups of sheep; not the shepherd, because, since Peter is the Church's one shepherd, as was shown, if the Church were another shepherd, there would be two shepherds, against the Lord's saying, *There shall be . . . one shepherd*. Therefore, [the Church is] the fold; and, since there is no fold without a shepherd, [it is] the fold of the one shepherd, who is the ruler and guide of the Lord's flock, namely the pope.

That [Christ] is speaking specifically about the pope is confirmed by the fact that He uses a verb in the future tense, signifying what will be done in the future. He says, *There will be one fold*, bringing both groups together, *and one shepherd*. Since what [already] is the case does not become so either now or in the future, the Lord Himself, Who said of Himself more than once in the same [gospel], *I am the good shepherd* [John 10:11, 14], was not made the one shepherd later; but, when *Feed My sheep* [John 21:17], not just these or those, was said to Peter alone later, *There will be one shepherd* was fulfilled in the place of that supreme shepherd, Who alone is the good shepherd in essence.

More fully: the pope is no less bishop of the catholic Church than any bishop is bishop of *his* church. But any bishop is the bishop of the individuals and of the whole gathering of them into one community. Therefore, the pope too is the bishop of the individuals and of all Christians gathered into the one catholic Church. This is confirmed: because, since "church" is a collective noun and signifies the gathering of the faithful, as c. *Ecclesia* [De cons. D. 1 c. 8] says, and a bishop is called the bishop of a certain church, it is necessary that he be the bishop of that church first and secondarily of the individual persons. On this basis the pope, who bears the title

"bishop of the catholic Church," and not of these, or of all, Christians, is bishop of the catholic Church itself first and secondarily of its members. And in truth so he is, because he should look after the proper good of the one catholic Church itself first and then the individual good of all the members.

If we inquire carefully how the pope can be called the bishop and head of the catholic Church, since the catholic Church includes the pope himself, there are two clear answers. First, because there is a fitting distinction for this purpose, just as when it is said that heaven contains all bodies, not because it contains itself, but because it contains all things that possibly can be contained; likewise, it is said that the pope is the head and bishop of the catholic Church, not because he is his own head, bishop, ruler etc., but because he is head of all that can have a head, ruler and bishop. Second, it is said that, because, according to Hilary,⁶⁰ the word should be subject to the thing, and not the thing to the word, for the same reason the pope is called the head and bishop of the catholic Church, because he holds the place of head and bishop in the catholic Church.

More fully: the pope has supreme power in God's Church; therefore, the pope is not under the Church. The antecedent is obvious from the aforesaid condemnation by Martin V in the Council of Constance,⁶¹ where, with reference to the pope, he is called the one having supreme power in God's Church. The consequent is proved, because one greater than the supreme power in God's Church cannot be understood to be in it, even if poetic license⁶² were permitted. Indeed it follows also from this that both the Church and the council are subject to the pope, because there are not two supreme powers in God's Church. Plurality of sovereignty,⁶³ since it is bad, as is obvious from the *Metaphysics* xii,⁶⁴ cannot come from Jesus Christ, the supreme good, Who wished His Church to be disposed in the best way.

This is confirmed by the authority of Innocent III in the general council,⁶⁵ in c. *Cum ex eo* [x 5.38.14] where it is said that the Roman

⁶⁰ Hilary of Poitiers, *De Trinitate*, iv, 14 CC 62.116.

⁶¹ *Inser cunctas*, Mansi 27.1212.

⁶² Literally *figendi licentia*

⁶³ Literally, "of principates"

⁶⁴ In fact xi, 10

⁶⁵ The Fourth Lateran Council (1215)

pontiff holds the plenitude of power; and he says in c. *Proposuit* [x 3.8.4], "We, by right, in accordance with [our] plenitude of power, can grant dispensations from the law." Paschal II says in c. *Significasti* [x 1.6.4], "They say that no statute can be found in the councils claiming that any councils have imposed a law upon the Roman church, since all councils both have been held by and received power from the authority of the Roman church." All these things have been cited for the pope's power over councils and, consequently, over the universal Church.

This is confirmed by the authority of Saint Thomas in the tract *Contra impugnantes religionem*,⁶⁶ where he says, "The holy fathers gathered in a council can establish nothing except with the intervention of the authority of the Roman pontiff, without which a council cannot be assembled."

More fully: The pope is the proximate and immediate vicar of Christ and the apostles; therefore, he has no power on earth greater than his. The antecedent is obvious from the frequently cited condemnation of articles by Martin V in the Council of Constance,⁶⁷ where one of the condemned articles is this: "The Roman church is Satan's synagogue, and the pope is not the proximate and immediate vicar of Christ and of the apostles." The consequent is obvious, because nothing is nearer and more immediate than the first and immediate.

From this it is obvious, first, that it is erroneous to say that the Church, as distinct from the pope, has authority immediately from Christ over the pope. In that case, the Church, not the pope, would be Christ's proximate and immediate vicar. It is impossible for both of these subordinate entities [the Church and the pope] to be equally near and immediate to Christ, as it is obvious that [our adversaries] pretend. And this is confirmed by the authority of Saint Thomas,⁶⁸ "The vicar of Christ serves the universal Church, subject to Christ, in his primacy and providence, as a faithful minister."

Finally, I ask that further consideration be given to the definition laid down in the Council of Florence, which, since it comprised the eastern and western churches, should be given precedence over [councils] only of the western [Church]. There, as we cited the

⁶⁶ c. 4. *Opera* (Rome), vol. 41A, p. 84.

⁶⁷ *Inter cunctas*, *Manst* 27-1209.

⁶⁸ *Contra errores Graecorum*, pars altera, c. 33; *Opera* (Rome), vol. 40A, pp. 101-2.

words in Chapter I,⁶⁹ not only is it said that the pope is the shepherd and teacher of all Christians, but that he also is the shepherd, governor and ruler of the universal Church with the full power instituted by the Lord Jesus Christ in blessed Peter. Let [our adversaries] say how it could be clearer that he is shepherd, ruler and governor not only of all the members but of the universal Church itself, and that he has received from the Lord Jesus Christ full power to feed, rule and govern the universal Church, not by the Church's mediation but through blessed Peter, whose successor he is. Let them see, if so much light has been vouchsafed to them, that they must, just like heretics, twist the Scriptures and the words of the saints, to defend their shameless error. Perhaps there is no Scripture so clear in faith that a distorted exposition could not drag it over to their side of the argument; but, when the plain sense of Scripture is sought, according to the consensus of the saints, then the truth is discovered.

Chapter VIII

Answers to the objections based on the authority of the Councils of Constance and Basel

In order to answer the objections clearly and in due order, we must begin with the decrees of Constance, to which two responses are given.

The first denies that these are authentic [decrees] made by the authority of a true council, since they were made in a time of schism, when there were three popes in God's Church, by only one obedience, that of John XXIII, with even that pope absent. That follows from the fact that they were promulgated on 6 April 1415 in Session V, and Gregory XII's obedience was joined to it on July 4 of the same year, and Benedict XIII's obedience began to be added on 13 October 13 1416 in Session XXII. Accordingly to say that this obedience constituted a general council representing the catholic Church is nothing other than to renew the old schism, condemn two obediences as schismatics and ascribe certainty to what always was, and is, doubtful.

⁶⁹ See above n. 9.

If it is said that Martin V approved these decrees and that synod, he approved the decrees in the last session,⁷⁰ where we read that he said, "He wished to hold and observe inviolably all and everything concluded and decreed by the present council acting as a council in matters of faith and never to contradict them in any way; and he approved and ratified those things done [by it] acting as a council, but not those done otherwise or in another way." Now it is obvious that whether the council is superior to the pope or the pope is superior to it is a matter of faith; therefore, those decrees made in Session v concerning the superiority of the council over the pope were approved. Again, [he approved] the synod in the bull condemning John Wyclif's articles⁷¹ with the approval of the council, where, formulating questions [for suspected heretics], he says:

Whether he believes that the condemnations of John Wyclif, John Hus and Jerome of Prague made by the holy general Council of Constance concerning their persons, books and documents were rightly and justly made and must be held and asserted as such by any catholic.

Since it is obvious that the sentence against Wyclif was issued in Session viii,⁷² that against John Hus in Session xv⁷³ and that against Jerome of Prague in Session xxi,⁷⁴ the consequence is that it was a general council then before the union of all the obediences, if Martin is speaking the truth in that bull.

The answer is that something may be treated as a matter of faith in two ways, materially and formally. Sometimes a matter of faith is treated formally when it is treated as something which must be believed or condemned as a matter of faith; sometimes, however, a matter of faith is treated materially, when some matter pertaining to the faith is treated – but not as something which must be believed or not believed, but in some other way; for there can be an infinite number [of such points] outside the formal [sphere]. Because, unless discourse is understood formally, certitude disappears, therefore, Martin V's words in that last session must be understood formally.

⁷⁰ COD 450 n. 4.

⁷¹ *Inter cunctas*, Mansi 27.1211.

⁷² See above n. 42.

⁷³ See above n. 53.

⁷⁴ COD 433-4.

In that council, certainly, they had treated and decided formally concerning a matter of faith, as is obvious in the sessions cited against the aforesaid three [heretics] and Session xix;⁷⁵ and many other things had been treated, but not as a matter of faith, among which were those in Sessions iv and v.⁷⁶ This is indicated by the fact that no deputies were appointed in those sessions to deal with [matters of] faith; rather deputation to look into matters of faith began after these in Session vi,⁷⁷ as is obvious there. There is no mention of believing or not believing. Martin V, however, approved only decrees formally concerned with matters of faith and no others. This is clearly evident because he said those words in answer to a request of the king of Poland's envoys demanding that the council's acts against the aforesaid heretics be confirmed, as is obvious from that last session; and, for this reason, that bull of condemnation [*Inter cunctas*] ensued.

As for the reference to the synod's approval, the answer is that, through it and other questions concerning the Council of Constance placed there, Martin V named the whole from the nobler part. Certainly all of the assembly at Constance, which began with only the obedience of John XXIII, and again thereafter when the obedience of Gregory XII was added,⁷⁸ and was completed when the obedience of Benedict XIII was added, and was authorized as a universal council after Martin was elected by the fact of his personal presidency, was called a universal council from this nobler and more certain stage;⁷⁹ and, in any of its stages, it is formally designated a universal council, as the words commonly are used.

This exposition is founded on the fact that it is not consonant with reason that Martin would have wished to declare that the other obediences were outside the Church; he wished, rather, to treat them honorably by using terms in the ordinary way, yet without

⁷⁵ COD 433

⁷⁶ See above n. 2.

⁷⁷ In this session commissioners were named to examine charges against John Hus (Mansi 27.610-11) and Jerome of Prague was cited (COD 410)

⁷⁸ Cajetan is referring to Gregory XII's convocation of the council

⁷⁹ Cajetan is following a variant of Juan de Torquemada's argument that the council was valid only after the three obediences were assembled, which postpones the achievement of that status until after Martin's election, see T. M. Izbicke, "Papal-ist Reaction to the Council of Constance. Juan de Torquemada to the Present," *Church History* 55 (1986), 7-20.

doing violence to the truth. For that reason he twice stated the opposite in that bull,⁸⁰ namely in the article, "The pope has supreme authority in God's Church," and in [the article], "Peter was the head of the catholic Church." And so that it might be conveyed that he called it a council from its last phase, he added the present to the past in the preceding question, saying, "that the council approved and approves, condemned and condemns," as if the past tense did not suffice. And because it had been held, on the basis of that first question, that the Council of Constance, in the present tense, under Martin V, condemns those three [heretics], it was not necessary to add the present to the past tense in the final question. The past [tense] thereafter implied, as regards the council under Martin, that it already had condemned [these heretics]; and so even words are saved by this usage.⁸¹ This is the first reply to the principal argument.

The second is: granted that those decrees are valid, they must be understood with a grain of salt. How this is to be done must be stated point by point.

First of all, the statement that the council has power immediately from Christ can be understood in two ways. First, [it can be understood] of the council as distinct from the pope; and it is false in this sense, as is obvious from the texts cited, c. *Significasti* [x 1.6.4], where it is said that all councils have power from the authority of the Roman see, and where Pope Leo says in c. *Ita Dominus* [D. 19 c. 7] that authority flows from Peter throughout the whole body as from the head. Also Saint Thomas says,⁸² "The holy fathers gathered in a council could establish nothing except with the intervention of the authority of the Roman pontiff, without which a council cannot be assembled." Notice too that he says "the holy fathers," because no law is ordained by fathers who are not holy but presumptuous; but their presumption is the law for themselves.

Second, it can be understood of the council including the pope. In this sense it is true that it has authority immediately from Jesus Christ. That it must be understood thus is deduced from two phrases in this decree. The first is, "legitimately assembled"; it is

⁸⁰ For the first proposition, see *Inter cunctas*, Mansi 27:1212. The second is an affirmative version of a condemned proposition in *ibid.* 27:1209.

⁸¹ Literally *verbaliter*.

⁸² See above n. 66.

certain that legitimate assembly of a council belongs to the pope, as is obvious from the texts cited up to now and throughout D. 17. The second is, "representing the catholic Church," for the whole ecclesiastical body, which is what [the term] "catholic, that is, universal, Church" signifies, is not in fact the whole ecclesiastical body if it lacks, or is understood as lacking, the head. It is obvious from what has been said, however, that the pope is head of the whole catholic Church and, therefore, of the council representing it.

If [the matter] is regarded with the eye of the pure of heart [Matt. 5:8], it will appear that the council has its capacity to represent the universal Church from the pope, who has most complete care of the universal Church. Who but the pope committed, as usually seems to happen, the votes of the whole Christian people to cardinals, bishops, abbots and a few prelates? For, necessarily, either Christians themselves have done this, or someone else with power makes [their] votes effective. Since experience testifies that [Christians themselves] did not transfer their votes to those [who were mentioned] – rather, if Christians were required [to do this] vast numbers would be found who refused to transfer their votes to others, and would prefer to be involved themselves, or they would say that a council must not be celebrated, it remains, therefore, for the pope, who alone is the father, shepherd, teacher, ruler and governor of Christians, both as a whole and individually, with plenitude of power, to transfer the votes of the whole Church to the council by assembling and authorizing it as seems [best] to him. On account of this, the assembled holy fathers can do nothing without the pope; and a council can be dissolved by the pope, taking [power] away from them, so that they no longer represent the universal Church authoritatively.

Nor is it true to say that the Church validates a council by not objecting [to it]. The reason for not objecting in the case of a true council is that the pope makes [it] good, whereas, in the case of a false one, the learned despair of overcoming the presumptuous, while the unknowing ignorant are silent. This is not a case of being approved by the Church, but merely of not being hindered by [the Church].

Next, when it is said that even the pope "is bound to obey" the council itself or its decrees, it is necessary to make many distinctions in respect of many terms.

One must distinguish between a doubtful and an undoubted pope. Just as, according to the sacred canons, what is not known to be consecrated is taken for unconsecrated and is reconsecrated, as is obvious from c. *Veniens* [x 3.43.3] and c. *Solemnitates* [De cons. D. 1 c. 17], so, if a legitimately elected pope is unknown, he is bound to obey as if [he were] not pope. This is directly pertinent to those decrees relating to the schism, when there were three popes and none was undoubted on the basis of his election.

A distinction must be made, again, regarding a certain and undoubted pope. Either we are speaking about those things which the council and its decrees lay down on the basis of divine law – matters of faith, for instance – or of natural law – such as those concerned with moral virtues and vices, and, in that case, the pope is bound to obey and cannot dispense against them. This is how those decrees must be interpreted. On this ground he is said to be bound to obey in three things, those concerned with the faith, reform and removal of schism, for these, with what belongs to them, pertain either to divine or natural law. Or we are speaking about those matters which are purely of positive law; and so one must distinguish concerning obedience in relation to divine or human judgment. Here we must say that, although the prince is free from the laws,⁸³ nor have councils imposed any coercive law on the Roman see in [matters of] human judgment, nevertheless, the pope is bound to obey a divine judgment, as Saint Thomas expressly holds.⁸⁴ Pope Gelasius says in c. *Confidimus* [C. 25 q. 1 c. 1], “It befits no see more than the first to carry out an enactment of the universal Church.”

Last, when one speaks of punishing those guilty of obstinate contempt, this can be understood in two ways. First, indifferently, as if any pope, even an undoubted one, obstinately persistent in any sin against divine or natural law were subject to human punishment. This sense is against the sacred canons, as is obvious from c. *Si papa* [D. 40 c. 6], c. *Electionem* [D. 79 c. 11] and c. *Ahorum* [C. 9 q. 3 c. 14]; nor must one accept that the makers of the canons wished to destroy with a single word what was approved by so many fathers over an infinite space of time. Second, it can be understood

⁸³ Dig. 1 3.31.

⁸⁴ 1^a 11^{ae} q. 96 a. 5 ad 3. *Opera* (Parma), vol. 2, p. 353.

discretely, according to the proportion of matter and person. So, since prelates generally should not be punished publicly, according to the example of God, Who did not punish Aaron publicly for idolatry, as Saint Thomas says,⁸⁵ the pope is not to be punished by any act but is to be rebuked verbally and in public, as Peter was rebuked by Paul [Gal. 2:1], as is gathered from Saint Thomas,⁸⁶ in a case in which he sins publicly to the Church's peril. In a case in which he can be deposed, he can be punished by an act of deposition. The consequence is that the words of the decree are understood thus discretely and proportionally.

From all of these [points] it is quite obvious that the superiority of the council or the Church over the pope is not held from these decrees. Accordingly it is not necessary to reply otherwise to the same point in regard to the Council of Basel in Sessions II and XVIII.⁸⁷ Concerning [that council], however, you must know that, although it was approved by Eugenius IV as regards its beginning and continuation, and although he said many things in favor of that council in his bulls, yet he never approved its decrees; on the contrary, he firmly defined in the Council of Florence that the Roman pontiff is the head, shepherd, teacher and ruler of the universal Church, as we declared above.⁸⁸

Also lord Juan de Torquemada,⁸⁹ who was present at both councils, says that there were many defects which, in the Council of Basel, interfered with the composition of its decrees, namely that they were not arrived at unanimously nor with the consent of the presiding legates of the lord pope, who refused to be involved in them. Nor were the envoys of England and Castile, who were known to be on the way, awaited. Nor were many wise men, who saw that these things were being done against the doctrine of the saints, heard. But they were promulgated amid the fury of the apostolic see's foes with a multitude of people of no authority. Accordingly [the decrees] of neither council are accepted as valid.

Nevertheless, in order to be absolutely fair, we have glossed them; and, if anyone has said that the glosses are contrary to the

⁸⁵ *In IV Sent.* D. 46 q. 2 a. 2 qa. 2 ad 5. *Opera* (Parma), vol. 7, pt. 2, p. 1145.

⁸⁶ *In IV Sent.* D. 19 q. 2 a. 2 qa. 2 ad 2. *Opera* (Parma), vol. 7, pt. 2, p. 830; II^a II^a q. 31 a. 4. *Opera* (Parma), vol. 3, pp. 126-7.

⁸⁷ See above n. 41.

⁸⁸ See above n. 17.

⁸⁹ *Summa de ecclesia* (Venice, 1561), fols. 237^v-240^r II, c. 100.

intention of the authors, arguing this from other acts of the same councils, I will respond, first, that I am a man, and I see the outward appearance of the words of those decrees; but *God beholdeth the heart* [1 Kings (1 Sam.) 16:7] In regard to the other acts of councils witnessing that the intention of their authors was otherwise, I say of Constance that, just as it erred by annexing the universal Church to one obedience, so, consequently, it erred in what followed from that, since it was then that it issued those decrees. As for Basel, it is indeed notorious that it erred, since it proceeded, even to the point of deposition, against a true and undoubted pontiff, Eugenius IV, who, nevertheless, [remains] true pope together with his successors. I shall say, second, that, if [those decrees] refuse to respect the truth, they are false, erroneous and liable to be burnt.

Chapter IX Answers to other objections

Having dispatched the texts from the Councils of Constance and Basel, which were judged of no authority, the objections which proceed from true and certain authority must be resolved suitably in the order in which they were cited.

Therefore, in regard to Martin V's declaration, in the condemnation of [Wyclif's] articles, that it is an error not to believe "*the Roman church to be supreme among the other churches* . . . if by the Roman church is understood the universal Church or the general council, or in so far as it would deny the primacy of the supreme pontiff over other particular churches,"⁹⁰ the answer is that, because the comparison is between diverse things, and these three, the universal Church, the universal council and the individual Roman church, are complete mystical bodies consisting of head and remaining members, they do not just meet in the head but are identified [in it], for the pope is indeed the proper head of the universal Church and of the council and of the Roman church. However, there is a distinction in regard to the remaining members between those representing and represented, as the remaining members of the Roman church are parts of the remaining members of the council and of the universal Church, as is obvious; consequently, when

⁹⁰ See above n. 43.

a comparison is made between the Church or the universal council and the Roman church, the comparison is made in respect not of the head but of the remaining members of each, according to what is said rightly, that both the Church and the universal synod are superior to the Roman church, as is deduced from that article. Accordingly, to admit this comparison leads to no conclusion against the pope's authority.

Nonetheless, it could be said that, because being supreme among the churches belongs to the Church by reason of the head, and the Roman church, by reason of the head, is of the essence of the council and of the universal Church, and no comparison, even with an exclusive clause, excludes things intrinsic [to the subject], therefore, a comparison of the council to the Roman church must not be admitted in respect of this, that it is supreme among the churches, just as neither in respect of [its being] the head, because being the head is the same thing as superiority; and this conclusion should be denied, "therefore, the council is supreme among the other churches, even the Roman one."

The answer to the argument that the Roman church is "one of the churches," is that more is required for this comparison. It is necessary that it be one and distinct from the Church, which is the council, with its own head, which it is not.

However, nothing to the contrary could be held from the end of this article, "the pope's primacy is over [other] particular churches," since it is an affirmative proposition, concerning primacy over particular [churches], and not a negative one, concerning primacy over the universal Church. What was not expressed there was expressed elsewhere, as has been conveyed.

The answer to the objection drawn from *Whatsoever you shall loose* etc. [Matt. 16:19 and 18:18] is that, according to those texts, only these three points are to the purpose. The first is that the power to bind and loose was given by Christ immediately to the apostles, which we conceded above in conformity with c. *In novo* [D. 21 c. 2].

The second is that the power granted is universal, according to those words *Whatsoever you shall loose*. Nevertheless, it is not as universal as the words sound; but *Whatsoever* is used distributively, according to subjects, so that the sense is, "Whatsoever subject to you which you loose or bind" etc. Otherwise, we must say that they

could have bound or loosed hidden things in general, [which is] against the apostle's words, *Judge not before the time; until the Lord come, Who... will bring to light the hidden things* etc. [1 Cor. 4:5]. Because Peter was not their subject, but [their] prelate, since he was made shepherd of the Church, therefore, the pope was not placed under it understood distributively, in as much as he is not a subject.

The third is that it is understood from the context that every church was to have the power to bind and loose, so that the things bound and loosed by it were loosed and bound in heaven, and that only over those subject to it. Accordingly, just as it is ridiculous to infer from the fact that the church of Bologna has this authority that, therefore, it can bind or loose things not subject to it, so, from the fact that the universal Church has this authority can be inferred only that it can act on things subject to it. Although many more things are subject to the universal Church than to the church of Bologna, nonetheless, they agree in this formal point, that no church can act except on things subject to it. Nor does it follow from this that the pope is subject to it; nor is it held, as was said above, that it has power immediately from Christ, because possessing it in this way – that is, immediately from Christ – was given to the persons [of the apostles] by a special grace. What was granted to someone graciously, then, should not be used by others as an example. All churches have this power from Christ, but not immediately.

It has to be said to the texts of Augustine saying Peter received the keys personifying the Church and its unity⁹¹ that their meaning throughout is this: that they were given not to Peter's person alone but to his office, which will last forever. Because Peter's office is that of the head, which has the function of distributing [power] to the rest of the body, therefore, things given to the office of head are said to be and are given to the rest of the body. Certainly the body cannot remain without a share if the head does its duty; this is why Pope Leo, in c. *Ita Dominus* [D. 19 c. 7], ascribes to the Lord Himself [the principle] that all power in the whole body is derived from Peter.

Because the unity of the office communicating to the whole Church received the keys in the person of Peter, therefore, it is said that Peter personified the Church; that [that] unity, not one man,

⁹¹ See above nn. 45–7

received the keys; that *Lovest thou Me? Feed My sheep* [John 21:17] and the like were said to all; and, therefore, that this is not said as if a community governed by the people or by a representative assembly⁹² received power. This sense is contrary to Augustine and Jesus Christ, as was shown. Augustine himself demonstrates this, saying,⁹³ "The Savior, when He commanded that the double drachma be given for Himself and Peter [cf. Matt. 17:27], seems to have paid for all, because, just as all sources of teaching authority were in the Savior, so, after the Savior, all of them are contained in Peter. He made him their shepherd so that he would be shepherd of the Lord's flock." In these words he teaches that all are understood to be within Peter's office as head.

The response to the first argument is that, although the Church has no less right to the power of jurisdiction than to temporal goods, nevertheless, it has [that right] not in the same way, but in a different one. For it acquires the power of jurisdiction as a monarchic government; dominion of temporal goods, however, as a community. The reason for the difference is that the power of jurisdiction comes from Jesus Christ, Who established such a government; dominion over things, however, is from men, who, as donors, transfer the dominion which they had to the community of the Church, and not to any one person. This is apparent in particular churches, where the churches plainly have the power of jurisdiction in [the person of] the bishop – not so, however, [in a case of] dominion over goods.

In response to the other argument, that the Church cannot err, a distinction must be drawn between a personal error in belief and one in a formal and authoritative definition; and also between the universal Church including the pope and [the Church] as distinct from his authority. And it must be said concerning personal error that it is certain that the pope, because he is only a single person, is more capable of erring in faith than the entire rest of the Church; but this is not relevant to the argument. The converse is true of a judicial error in faith, because the community of the Church without the authority of the pope is more capable of erring than the pope. The reason is that the pope's error in a definitive decree

⁹² Literally "senatorial."

⁹³ Pseudo-Augustine, *Quaestiones in novo testamento*, c. 75. CSEL 35/2 272

concerning the faith is an error of the whole Church and, truly, of the universal Church, head and members, because determining finally what must be held and what rejected concerning the faith belongs to him, as is held by all of unshaken faith, as Saint Thomas shows on the authority of Cyril and Maximus⁹⁴ and proves by reason.⁹⁵ Now it is impossible for the universal Church to err in faith; therefore, it is impossible for the pope to err in faith authoritatively in a definitive judgment. It is different in other matters, as Saint Thomas shows.⁹⁶

The argument, therefore, fights on the opposite side, because the pope in a judgment of this sort is most in the right because he has the help of the Holy Spirit in a judgment concerning the faith for the sake of the universal good of the Church, just as He promised, *The [Holy] Spirit... will teach you all truth* [John 16:13]; and He said to Peter, *I have prayed for thee, that thy faith fail not; and thou, being once converted, confirm thy brethren* [Luke 22:32]. According to what Pope Innocent [II] says in c. *Quoties* [C. 24 q. 1 c. 12], "Whenever a matter of faith is brought forward, one must have recourse only to Peter, that is, to the one having the honor and authority of his name."

Know that, when it is said of judicial error that only the universal Church cannot err in faith, the supreme pontiff is not excluded but included, because the authority to determine concerning the faith belonging to the universal Church principally resides in the Roman pontiff, as Saint Thomas says.⁹⁷ Indeed that authority which is said to belong to the universal Church can only be that of the pope, as is obvious from the cited authority,⁹⁸ where the final decree concerning the faith is proved to belong to the pope. Therefore, in the cited *quodlibet* of Saint Thomas⁹⁹ the Church's judgment and the pope's are used as synonyms, showing expressly that one must stand firm with the pope's decree, [made with] the assistance of divine providence.

Therefore, it is necessary to be cautious lest we should be deceived by words understood otherwise, for we are certain that

⁹⁴ *Contra errores Graecorum*, pars altera, c. 36 *Opera* (Rome), vol. 40A, pp. 102-3

⁹⁵ 1^a 1^a q. 1 a. 10 *Opera* (Parma), vol. 3, p. 9

⁹⁶ *Quaestiones quodlibetales* (Paris, 1926), pp. 370-1: *Quodl.* 9 a. 16

⁹⁷ 1^a 1^a q. 11 a. 2 ad 3. *Opera* (Parma), vol. 3, pp. 48

⁹⁸ See above nn. 94-5

⁹⁹ See above n. 96

neither the pope nor the Church nor the whole universal synod can err in faith when judging authoritatively concerning the faith. I find nothing concerning the headless Church and synod, because I see no authority in it without a head, although [there may be] many merits. Failure to refer to this distinction between personal faith and authoritative judgment is the reason why the doctors are ignorantly preferred to the pope by many in matters of faith. They consider him, not his office, since divine aid concerning the faith [is] in the office, even if not in the person.

[In reply] to the additional point, that the keys exist for a purpose, on account of the Church, I concede frankly that the pope, as the possessor of the power of jurisdiction, exists for the good of the faith and the peace of the Church, as is evident from Saint Thomas,¹⁰⁰ and is less noble than the peace of [Christ] which surpasseth all understanding [Phil. 4:7]. This is because the pope is prince only as the minister and vicar of the natural prince, Who is the supreme good, to which the common good of the whole community is directed, as follows from the *Metaphysics*.¹⁰¹

[The answer] to the doctrine from that principle "the whole is greater than its parts," granting formally that principle concerning the whole and its parts as such, is that, although the pope, as regards [his] person and merits, is a part of the universal Church, nevertheless, according to the power of jurisdiction, which is our subject here, he is not a part; for the power of the universal Church does not arise from the power of jurisdiction of the pope and of the others, like a whole from the parts. On the contrary, the pope's power is the whole power of the universal Church; and the other powers are participants, given a share in his responsibility. It already has been said that the pope and the Church cannot do more than the pope alone, although the powers of the pope and the Church are more numerous than those of the pope alone.

If you wish to insist on the argument that the head is a member and a part of the body, look to Jesus Christ, Who is the true head of the whole Church in such a way that, neither as regards power nor as regards nobility and sanctity, is He a part of the Church. Observe that, in using mystical language of this kind, it is not neces-

¹⁰⁰ See above n. 13

¹⁰¹ See above n. 64

sary for those [terms] which belong to imperfection, such as being a part, to apply to those things which are of a higher order, like Jesus Christ and His vicar-general (who, in regard to [his] nobility and sanctity and person, is part of the Church).

One might reply to Jerome's [saying], "The world is greater than the City [of Rome]," [D. 93 c. 24] that it is true in many things, such as merits, virtues, knowledge; and [true] in an argument from the force of custom, not of power, namely, that the custom of the world prevails over the custom of the City. But the power of the City is superior to the power of the world. That this is Jerome's intention is obvious from the context, because he is speaking of the custom of churches, according to which deacons sit below priests.

[In response] to the argument fashioned from the Lord's command, *Tell the Church* [Matt. 18:15-17], because [our] adversaries seek refuge in the holy glosses, so that the prelate should be understood as the Church,¹⁰² as if the holy doctors were of the same opinion [as they are], we say, on the other hand, that the Lord, in that affirmative command, commanded many things in a certain order: first, the act of charity, *Rebuke him between thee and him alone*; second, the judicial acts, *Take [with thee one or] two more: that in the mouths of two or three witnesses every word may stand*, and, *Tell the Church*. This is the difference between those two acts: the act of charity extends to every sin against a neighbor and to every brother, as is obvious; judicial acts, however, do not extend to every sin against a neighbor nor to every brother. That they do not extend to every sin against a neighbor is obvious from the fact that there are some sins against us to prove which witnesses cannot be produced, as is obvious from the sins committed by spouse tempting spouse in bed to a sin against nature, and from [cases where] words are used in absolute secrecy. In these things, because witnesses cannot be produced, this affirmative command, *Take with thee [one or] two more: that in the mouths of two or three [witnesses] every word may stand*, has no place; nor [has], *Tell the Church*, because that is understood of sins subject to witnesses being produced. That this does not extend to every brother is established on the same foundation, because, if there is a brother who is not subject to anyone

¹⁰² Cajetan is referring to the conciliarist rejection of the papalist opinion that *Tell the Church* means, "Tell the prelate of the Church."

on earth, neither that command, *Take with thee*, nor *Tell the Church*, can be applied to him; it would be futile. Because the pope is such a brother, therefore, this command has no unconditional place against the pope. I say, "unconditional," however, to preserve myself from a case in which he can be deposed.

That this is the true exposition of the letter [of the text] is proved by reason and authority. By reason: because the Savior expressed two things uniformly in this command, the person who sins, *thy brother*, and the sin, *shall offend against thee*. He lays down both [commands] without exception or restriction. Nevertheless, in regard to the sin, it is necessary to limit [the command] to a sin to which witnesses can be produced; accordingly, in regard to the [sinning] brother, it is necessary to limit [the command] to a brother who is a subject communicating with you on earth in the Father. And the words *thy brother* may be interpreted as meaning simply a brother, that is a brother who is no more than a brother. Now your other prelates are, absolutely speaking, no more than a brother; they are more [than that] only in certain respects. The pope, however, has that status in all respects. A limitation in regard to the sinning brother must be accepted, therefore, on the same basis as a limitation in regard to the sin.

The authority is that of Saint Thomas,¹⁰³ who says that, if a prelate does not have a superior, recourse must be had to God, Who will correct and remove him. Now this must be said properly only of the pope, because other prelates have a superior. Nor is Saint Thomas alone; but an almost infinite number of texts could be cited now showing that only the pope has no superior and, because of this, is not included under the appeal against a sinning brother as far as judicial acts [are concerned].

From this it is obvious how rashly some say that upon this text, without any misrepresentation, is based the plenitude of power of the spiritual sword and its execution [found] in the assembled Church, and thus in the universal council, [which power] is over any Christian who is our brother, even if he is the pope. On it is founded the power to define, determine, establish, administer, make laws – even over the pope's person and the exercise of his power.

¹⁰³ In *IV Sent* D. 19 q. 2 a. 2 qa. 3 ad 2 *Opera* (Parma), vol. 7, pt. 2, p. 852

This obviously is erroneous from what has been said and will be said; and those who say this do not know how to discern that commands which are given concerning acts of judicial justice are understood both of things and of persons that are subject, and not of others, and that those commands do not prove the subjection of any given thing or person to the Church. [Justice] deals with subjects, whatever and whoever they are.¹⁰⁴ It is a piece of ignorance, therefore, to argue the pope's subjection from this text.

This is how the text in question should be interpreted in order to refute them. First, the text is no more concerned with the universal Church than with a particular one, like that of Milan. This is shown from the fact that, if my brother sins against me in Milan, it suffices to tell that church; and, if he will not hear it, he will be *as the heathen* etc. The term "church," then, is used without distinction. Then, further, in the words *Tell the Church*, either "church" is being used in a general way to refer to any kind of gathering of the faithful – and this is not the case, because, if he does not heed the whole assembly of the Milanese, without [their] prelates, he would not be *as the heathen and the publican*, as is obvious; or else "church" is understood as a gathering of the faithful with [their] prelate, and, if it is understood thus, then even the universal Church (when it is necessary to refer to it) is not understood as headless but as united with the head, who is the pope. From this command of the Lord, understood in due relation to the universal Church, the pope is shown to be included, not under the designation of a sinning brother, but under that of the Church, which judges; for it is to the Church with, not without, [its] head that He commands that the sin of the sinning brother be told.

Again, the pope is not in a worse condition in respect of his Church than any bishop in respect of his church. A bishop sinning against his brother is not denounced to his headless church but to "the Church," that is, a superior prelate; and the Lord's command is fulfilled sufficiently. Therefore, the pope is not denounced to the headless catholic Church, whose bishop he is, but to a superior, Who is Jesus Christ, by crying to God, Who is ready to avenge quickly those who cry to Him, much more than a terrestrial judge, as He witnesses in Luke 18[:7].

¹⁰⁴ Thomas Aquinas, 1^a 2^a q. 67 a 1 *Opera* (Rome), vol. 9, p. 96

One must deny, therefore, that the universal Church is the pope's ordinary judge in punishment, and, consequently, that it simply and absolutely is his judge and, consequently, that it has any legal action against him. Whether there is any case or event in which it is his judge will be examined below.

It is quite obvious that for the Church to be the pope's judge absolutely in punishing also is repugnant to the sacred canons, because, if the pope could be denounced, judged and punished for any sort of sin against his neighbor, if he did not heed a fraternal admonition, [this would be] against c. *Si papa* [D. 40 c. 6], cc. *Patet, Nemo, Aliorum, Facta, Cuncta* [C. 9 q. 3 cc. 10, 13-15, 17] and all the canons of the pontiffs Boniface, Nicholas, Innocent [II], Symmachus, Anterus and Gelasius. Although one or another of them might perhaps be interpreted as speaking of an individual judge, and not of the universal Church, nevertheless, many chapters exclude every judgment except that of God, as in c. *Patet*, where there are these words about the apostolic see, "There is no judgment by one whose authority is greater." Similarly, there are these words in c. *Aliorum*, "God wished the cases of other men to be determined by men; but, without question, He reserved the bishop of this see to His own judgment," where the pope even excludes offering objections to the contrary.

It is against Boniface VIII's additional constitution *Unam sanctam* [Extrav. commun. 1.8.1], where he says in a formal definition, "If the earthly power errs, it is judged by the spiritual; if the lesser spiritual power errs, it is judged by the greater; if, however, the supreme one [errs], it can be judged by God alone and not by man." It also is contrary to many doctors of theology, as the lord Juan de Torquemada says.¹⁰⁶ Hugh of Saint Victor, Albertus Magnus, Saint Thomas, Alexander of Hales, Saint Bonaventure, Pierre de Tarentaise, Ulrich [of Strasbourg], Richard [of Middleton], Pierre de la Palu, Hervéus Natalis, Augustine of Ancona, Alexander of Saint Elpidio; and, in canon law, [it is contrary to] Hostiensis, Iohannes Andreæ, Guido [de Baysio] the Archdeacon, Innocent [IV] and Alvarus [Pelagius].

Lastly, to the points cited from the sacred canons, on the basis that the pope cannot act against the statutes of the fathers, I have

¹⁰⁶ Cajetan abridges here the citations in *Summa de ecclesia*, fol. 229^v II, c. 93

the reply of Saint Thomas,¹⁰⁶ that this is to be understood in regard to those things which are of divine or natural law. This view also is taken in the [ordinary] gloss to this and the preceding canon, *Sunt quidem* [C. 25 q. 1 cc. 6–7].

The answer to c. *Prima salus* [C. 25 q. 1 c. 9] is similar, having regard to the point that by the appellation “fathers” the pope, who is the father of the fathers, principally is meant.

What Jean Gerson¹⁰⁷ cites from Gratian against the supreme pontiffs, “Laws are instituted when they are promulgated; they are ratified when they are approved by the behavior of those observing them,” as if testing laws were the most important source of their ratification, is more worthy of laughter than of exposition.

It remains certain, therefore, and must be held undoubtedly, that the pope is superior to the universal Church, not just as regards individual persons and churches, but as regards the community of the Church, having God alone as his superior.

Chapter x

A new fiction whereby some imagine that the council is superior to the pope

Thus far our argument and conclusion has been that the pope has power over the universal Church and council as their head, shepherd, ruler and guide. Next, a certain new fantasy of Jean Gerson must be treated and confuted, since it is exceedingly dangerous and extremely harmful to holy mother Church. His fantasy must be recounted so that all may see for themselves.

First of all, he posits ecclesiastical power as an integral whole to be distinguished into its integral parts: papacy, cardinalate, patriarchate, episcopate and priesthood. He wishes the Church to be integrated out of these, so that, if the papacy, not the pope, is removed, it is not the universal Church.¹⁰⁸ Likewise his meaning is that the Church and universal council, whether or not there is a pope, includes papal authority; and that supreme ecclesiastical

¹⁰⁶ See above n. 49.

¹⁰⁷ *De ecclesiastica potestate*, Consideration 4. OC. 6:217–18, citing D. 4 c. 3.

¹⁰⁸ *De auctoritate sponsi ab ecclesia*, Consideration 12. OC. 3:301–2, *De ecclesiastica potestate*, Consideration 7. OC. 6:222–3.

power and the plenitude of ecclesiastical power, containing the remaining [powers] in form, potency and source, and vested formally and subjectively in the Roman pontiff alone, was (he admits) given to Peter by Jesus Christ. He admits too that government of the Church was instituted by Jesus Christ as a monarchy, so that it can be changed only by God, and that the monarch is the pope.

At the same time he also recognizes, and rightly, that ecclesiastical power can be taken in three ways: first, in itself, for instance the papacy as such; second, according to its application to this or that person, as when the papacy is [vested] in John or Martin; third, in its exercise, as when that the pope does or does not do this or that.¹⁰⁹

And, having made another distinction in regard to the multiple ways in which [something] may be vested in someone, he argues that, although any ecclesiastical power is formally and subjectively only in those who formally derive their names from it – as papal [power is] in the pope, [the power] of the cardinalate, in a cardinal, episcopal [power], in a bishop – nonetheless, every ecclesiastical power is in the universal Church, or the universal council representing it, in three ways: first, for a purpose, because it was given for the building up the body of Christ, second, to regulate its vesting in a person; third, to regulate the use or exercise of power already vested in a person.¹¹⁰ Concerning the first and second he says that there is no difficulty; concerning the third he speaks similarly, if it is considered that papal power was given for edification of the Church.

He proves it thus: the pope can sin, and he can abuse this power for the Church's destruction; similarly, the sacred college of cardinals is not confirmed in grace or faith. It was necessary, therefore, for some unswerving and undeviating rule to be left by Christ, the best of lawgivers, according to which abuse of this kind of power can be checked, set right and restrained. This is the Church or the universal council; therefore, the papacy is in the universal Church as in what regulates the exercise [of its power]. And this is confirmed as follows: since the [golden] mean of virtue is not to be attained except by wise judgment, and the pope has power to build

¹⁰⁹ *De potestate ecclesiastica*, Consideration 6: OC 6.220–2.

¹¹⁰ *Ibid.*, Consideration 1: OC 6.211–12.

up by wise judgment, the final resolution of this judgment belongs to the Church or the council, where there is undeviating wisdom.

This, he says, is the foundation of many things, for instance, that a pope can be judged and deposed by a council; that he is subject to the council in regard to the use of his power; that he can be asked, *Why do ye these kinds of things?* [1 Kings (1 Sam.) 2:23]; and that papal power is in the council in a fourth way, namely, acting in his place, it can do whatever the pope can, as the decrees and acts of the Council of Constance witness.

Moreover, he distinguishes [two aspects of] the pope's power. [On the one hand, there is] the power granted by Jesus Christ in [the person of] Peter as his vicar and as monarch, both of orders and of jurisdiction, a competence applicable to the willing and the unwilling; and this he regards as supernatural. [On the other hand, there is] the power that belongs to the pope by natural and positive law.¹¹ By natural law, namely, because it is a precept of the law that the person who is supreme in any polity should enjoy many privileges and honors denied to others; from positive [law] in many forms – in this case, [that] of the Church itself or of the general councils – such power as a perfect community can give its head. He takes this to be the authority to interpret and dispense from the statutes of the general council, as need arises or manifest utility demands, when, for the time being, recourse to a general council is not available. He thinks that ignorance of this distinction is the source of much misunderstanding among those who think that the pope can do everything by virtue of the authority granted to him by Christ.

He infers, therefore, that the council is superior to the pope, has coercive power over him, can impose laws on him about the use of power, suspend him from the exercise of it, and depose him with or without fault. He says, accordingly, that to compare the Church to the pope is nothing other than to compare the whole to an integral part and to ask which is greater.¹² For it is obvious that the authority of the Church or the universal council is greater than the pope's authority in six ways: first, in amplitude or extension; second, in infallible direction; third, in reform of conduct in head

¹¹ *Ibid.*, Consideration 10: OC 6 227–32.

¹² *Ibid.*, Consideration 7: OC 6 222–3.

and members; fourth, in coercive power; fifth, in final decision of difficult cases concerning the faith; sixth, because it is more copious,¹¹³ for it contains virtually all power and every kind of political regime – papal, imperial, regal, aristocratic and timocratic.

He confirms what he says from the Acts of the Apostles in many places: because James, not Peter, defined in a council; and the letter was written to Antioch not in Peter's name but that of the community, *The apostles and ancients* etc. [Acts 15:23].¹¹⁴ They sent Peter and John as the Church's subjects [Acts 8:14], and Peter was compelled to account for his going to the centurion [Acts 11:2–4]. He founds it too on the previously cited texts, *Tell the church* and *Whatsoever you shall bind on earth*, and on the Council of Constance.¹¹⁵ He concludes that the subjection of pope to council has been demonstrated clearly from the principles of theology. He even goes so far as to call pestiferous and pernicious the doctrine placing the pope over the council, or at least not unequal to it.

Chapter xi

That, in the absence of a pope, the papacy does not
subsist in the Church, able to make good and
regulate its usages

By grasping from [its] root the principle underlying the truth to be recognized in regard to what was considered above, we shall show, first, that the foundation on which this structure arises is false, namely, that, apart from the pope, the papacy subsists in any way whatsoever in the Church of God – as regards, for instance, the regulation of its exercise and supplying its deficiencies. Next, it will be shown to be false that the pope has any power from the Church; rather, he can do everything by virtue of the papacy's authority. Thereafter, all the points will be resolved by examining them one by one, after first exhibiting the truth in regard to the question whether power of granting public powers to individuals is vested in

¹¹³ *Ibid.*, Consideration 12 OC 6 236–42

¹¹⁴ *Ibid.*, Consideration 11: OC 6 235

¹¹⁵ See above n 109.

the Church apart from the pope. That is how, at present, we are speaking of the Church – as distinct from the pope – and how we wish [the term] to be understood, as long as these points form our subject.

If, then, the papacy is in the Church thus, since the Church does possess it in its own right (as our opponent admits), it follows necessarily that it was given to [the Church] by God. Now we know such gifts of God only from revelation contained in sacred Scripture, or else in the tradition of the apostles, or in the holy doctors or apostolic decrees, or by proving it effectively by reason based on theological principles. If, therefore, no such revelation, but rather the opposite, is found in these [sources, and] if theological reason does not prove the point, but, rather, leads away from it, then the opposite view must be taken.

That this donation is not found in sacred Scripture is obvious from what has been said. The texts drawn from Matthew 18[:17–18] say nothing except about things subject to the Church generally, as was declared already. From these [texts], accordingly, the subjection of this or that [individual] cannot be proved, but what power [a prelate] might have over a subject.

Nothing like this can be based on the apostles' deeds, because, as in Acts 8[:14], although Peter and John were sent, nonetheless, [they were] not [sent] as subjects. The Holy Spirit was sent by the Son, according to *I will send Him to you* [John 15:20]; nevertheless, [the Spirit] is not a subject. He is a poor theologian who deduces being subject from being sent. In Acts 11[:2] the controversy of those who were of the [party of] circumcision with Peter displayed not superiority but an ambiguous imitation of the law of Moses. That text, joined with Acts 15[:5], where those adhering to the heresy of the Pharisees said that the obligations of the Law were to be imposed even on the gentiles, suggests that the controversy was stirred up not by the apostles but by Jewish converts, especially from among the Pharisees. On the other hand, sometimes it is permissible for subjects to rebuke prelates not with deeds but with words, as appears in the case of Peter and Paul in Galatians 2[:11] and as we showed above from Saint Thomas¹¹⁶ Likewise, Gregory, as is found in

¹¹⁶ See above n. 86.

c. *Petrus* [C. 2 q. 7 c. 40], interprets this as meaning that Peter did not wish to use his authority.

In Acts 15[:13] it was not a universal council, nor did James deliver the decision; and, therefore, it does nothing for the [opposing] argument. That it was not a universal council is obvious from the fact that only three of the twelve apostles, Peter, James and John, were there, as is found in Galatians 2[:9]. What is narrated in Acts 15, then, took place when Paul, as he says in Galatians 2[:1], had gone up to Jerusalem after fourteen years. As the ordinary gloss says at Acts 15,¹¹⁷ that James did not give the decision but gave his judgment speaking after Peter is obvious from what follows in the text, *Then it pleased the apostles and ancients, with the whole Church, to choose men. . . . and to send etc. Writing by their hands* [Acts 15:22-3]. The conclusion, therefore, on which, without a doubt, the definitive decision rests, was reached in common, neither by Peter nor by James.

Take note also that the answer to the question was sought not by Peter but by the apostles and presbyters present in Jerusalem, as is obvious in Acts 15[:6], therefore, Peter, exercising the ordinary apostolate, not papal authority, showed himself to be one among others in such a gathering, and was content with designation of "apostles." And rightly so, because all things have [their] time; nor was it then the time to use the plenitude of his power, especially in regard to a temporary measure such as was proposed by James, when he said, *I judge* [Acts 15:19], that is, "This is my judgment" etc. The time came later when the pope revealed his plenitude of power, as is obvious to anyone who reads the records of the fathers and of the Church. Yet even at this stage Peter is found to be the leader – in the election of Matthias, in the condemnation of Ananias and Sapphira, and in that of Simon [Magus] [Acts 1:15, 5:3, 9, 8:20-3]; and, from the continuous tradition of the apostles, that the pope, rather than the council, received the primacy has been upheld in the belief and profession of Christians even down to the Council of Constance, until which time the holy doctors taught this without a doubt.

¹¹⁷ See, more correctly, ordinary gloss at Acts 11:23

Nor could the Council of Constance or that of Basel determine the opposite, because, if the authority of Jerome alone, supported by sacred Scripture, as is obvious from c. *Tria* [C. 36 q. 2 c. 8] joined to c. *Placuit* [C. 36 q. 2 c. 11], could prevail over a council,¹¹⁸ how much more can such a great and shining cloud of witnesses cited, openly supported by sacred Scripture, as was shown and will be demonstrated, prevail over the gathering at Constance before [the election of] Martin V and over the Council of Basel, for all the councils received power from and were held by the authority of the Roman see, as was cited from c. *Significasti* [X 1.6.4].

That argument by reason from theological principles establishes not this view but rather the opposite is manifest. The whole issue in this connection turns on the point that the supreme provider and legislator, the Lord Jesus Christ, did not leave [His] well-beloved Church without a sufficient and unwavering rule as a remedy for any defect which might arise. The pope can sin; however, the Church cannot err; therefore . . . Not only indeed does this argument not lead to this conclusion on theological principles, it tends, in fact, toward condemned heresy. It is based on the assumption that the Church cannot err and the pope can. They are speaking of making either a personal error against justifying grace¹¹⁹ or a judicial error in defining about some affair of the Church or the faith. If they are speaking of a personal error against grace, [the argument] falls into the condemned heresy that ecclesiastical power is founded on charity,¹²⁰ and yet, in this way, nevertheless, [Jean Gerson] cannot avoid self-contradiction. He explicitly advances the argument that the pope can sin, while the sacred college [of cardinals], which helps him, is not firmly established in faith and grace. From the fact that, according to him, [only] the Church is secure in faith and grace and, therefore, unwavering, the necessary conclusion is that it

¹¹⁸ Cajetan is opposing the authority of Jerome to that of the Council of Melde, an argument which Almain answered at length.

¹¹⁹ Literally *gratui gratum faciens*, interior grace incompatible with mortal sin, see F. Oakley, *The Political Thought of Pierre d'Ailly: The Voluntarist Tradition* (New Haven, 1964), pp. 82-3. Cajetan is distinguishing between a papal error threatening his salvation and one dangerous to the Church.

¹²⁰ Cajetan may be referring to the condemnation of John Hus summarized in the bull *Inter cunctas*, Mansi 27:1209-11.

has from God regulatory power over the exercise of all ecclesiastical power. What is this but to say that they are following the heresy of those who, since the Lord is present *where there are two or three gathered together in My name* [Matt. 18:20], locate ecclesiastical power in good Christians [alone]?

Furthermore, who revealed to this man that the gathering of prelates in a general council, apart from the pope, is more firmly established in faith and personal grace than the college of cardinals; and why cannot all the former be as much in mortal sin as the latter?

Moreover, although personal grace was promised to the Church [as] always [present] in some member, according to *Behold I am with you all days, even to the consummation of the world* [Matt. 28:20], who promised this more to those assembled prelates than to the college of cardinals with the pope? Whatever authority is brought forward concerning those assembled, that is, *Where there are two or three gathered together etc., If two of you shall consent etc.* [Matt. 18:20, 19] and the like, has no more place in the former headless assembly than in the latter gathering, [which is] not headless and which truly is [gathered] in the Lord's name, at least as far as authority [is concerned]; nor can it be said that this applies to the aforesaid council in so far as it represents the universal Church, because the represented do not pass personal graces on to the representative, as is inductively obvious.

If, however, the discussion is concerning an error in defining judicially concerning any matter, it is certain that both the pope and the council together with the pope can err by judging badly concerning a kingdom, that this one has the right to it and not another, or that this bishop is a simoniac, as is obvious from c. *A nobis* [x 5.39.28] and in the *quodlibet* of Saint Thomas cited above.¹²⁷

If, however, the subject is a judgment concerning the faith, then pope and council are compared either according to their proper natures and powers, and on that basis both pope and council can err, because every man is a liar, or in regard to the assistance of divine providence, and on that basis it is false and erroneous to say that the pope can err, because this would imply

¹²⁷ See above n. 96.

that the whole Church can err in faith, because determining concerning the faith pertains to him, as is held in c. *Maiores* [x 3.42.3] and cc. *A recta*, *Memor* and *Quoties* [C. 24 q. 1 cc. 9–10, 12] All Christ's faithful must follow what is determined by him concerning the faith, as is obvious from the fact that anyone who adheres pertinaciously in faith to a conclusion condemned by the apostolic see is regarded as a heretic, and from the fact that whoever teaches and opines otherwise concerning the faith and the Church's sacraments than the Roman church [does] is a heretic, as is obvious from Saint Thomas¹²² teaching that it pertains to the supreme pontiff's authority to determine finally those things which are of the faith, so that they are to be held by all with unshaken faith, and that against the pope's authority in a matter of faith "neither Jerome, nor Augustine nor any of the holy doctors defended their opinion,"¹²³ and c. *Si papa* [D. 40 c. 6], where it is said that the salvation of all depends, after the Lord, on him. By this infallible judgment of the pope is fulfilled [Jesus' saying] that the Holy Spirit would teach us all things [John 14:26].

Summing up the answer to the argument, then, we say that one or another of the premises always is erroneous. If the subject is falling from grace, the universal principle that the fallen must be corrected on earth by the righteous is erroneous and was expressly condemned by the Council of Constance under Martin.¹²⁴ If the subject is deviation in a judgment concerning the faith, the proposition that the pope can err and the rest of the Church cannot is erroneous. This is confirmed by the texts cited above.

This response is an argument based on consideration of the material cause. This is the basis of the conclusion that, in things which are of the faith, the community is no more the subject or occasion of divine assistance than [is] one person placed in the office of vicar of Christ, since God makes no distinction between many and few in saving one or many. Indeed, since a monarchic government was instituted, power was bestowed on only one

¹²² See above n. 95.

¹²³ *II^a II^{ae} q. 11 a. 2 ad 3: Opera* (Parma), vol. 3, p. 48.

¹²⁴ This seems to be a loose summary of a passage in Martin V, *Inter cunctas*, Mansi 27 1213.

man, as Saint Thomas says¹²⁵ On this basis it is freely said that the pope has power to build up, just as the wise man, that is, counsel, shall prescribe. Accordingly, in things which are of the faith, he should build up the Church according to divine wisdom revealed to him in the Scriptures and assisting him; however, [he should do so] in the direction of [others'] conduct according to the monastic¹²⁶ and political prudence which is in the prince. He is helped in this very much by the counsel of the saints and fathers; and, therefore, they are received with veneration by the supreme pontiffs. Indeed the statutes show the pope the way which he ought to follow on God's account, although they cannot compel him, as in what was cited from Saint Thomas.¹²⁷

The arguments concerning the pope's deposition will be resolved below.

Concerning the formal cause: because the papacy is, on account of its formal reason [for existing], the supreme power in the Church, as is held from what has been said and [Gerson] himself admits, it would be repugnant to the supreme power to be given a superior in the Church, because then it would not be supreme in the Church; but a power in the Church able to regulate the papacy in regard to its exercise would be superior to the papacy; therefore, there is no such power in God's Church; and, consequently, there is no [power] superior to the papacy's able to regulate its exercise.

The first proposition assumed, as was said, also is obvious from the Council of Constance's decision under Martin V.¹²⁸ The second is self-evident. The third is both proved and admitted by him. The proof is that, since "Equal has no power over equal,"¹²⁹ and, therefore, one pope cannot bind another's hands, it is necessary, if the Church can bind the pope's hands by establishing coercive laws about the exercise of the papacy and suspend the pope from [its] execution, that the power of the

¹²⁵ *In IV Sent. D. 19 q. 1 a. 1 qa. 3 ad 3. Opera* (Parma), vol. 7, pt. 2, p. 825.

¹²⁶ That is, the prudence which helps him look after himself, whereas political prudence helps him look after others.

¹²⁷ See above n. 84.

¹²⁸ Cajetan treats the bull *Inter cunctas*, which ratified the condemnations of Wyclif and Hus, as a decree of the council.

¹²⁹ This legal dictum had attained proverbial status by Cajetan's time, see, however, X 1.6.20.

Church is not equal to the papacy but superior to it. The point was admitted by [Gerson], when, speaking of a dispensation issued by the pope, he says,¹³⁰ "This dispensation holds etc. if it does not contain an open error or unless it was prohibited by a superior law, which is said concerning statutes which could be made by a general council about the use of papal power."

To make their fiction more obvious, [the following analogy] should be noted. In the union of all the external senses in a single subject, no single judge of the individual powers of the senses could be found without presupposing a sense as judge superior to them all and common to them all. It is necessary, therefore, to posit a "common sense," as is obvious in *De anima*,¹³¹ as the single, common judge of all things sensed, superior to them all, by which alone the single subject, having many sensory powers, exercises judgment. In the same way, positing (but not granting) that all ecclesiastical powers were to be found in the Church (namely, the papacy, the cardinalate, etc.), if another power did not arise from these, or were not added to them in some way, nothing could be done except what was possible for the individual powers of the papacy, the cardinalate, the episcopate, etc. For, as is said in *De anima*, to judge by two powers is exactly the same as if there were two judges. Accordingly, if all the powers in the universal Church, even including the pope, came together, according to wise men, the whole Church together with the pope can do no more than [its] individual powers could. For this reason, since the papacy cannot tie the hands of the pope, neither can the whole Church do so, unless we discover some power superior to the papacy, by exercising which the community of the Church judges the acts of particular powers. Imagining this entails contradicting the truth and [self-contradiction for Gerson] himself, who treats the Church as composed of the papacy, the cardinalate, etc.

Lastly, on the basis of the final cause, the point is proved in four ways. First, because, wishing to avoid Charybdis, it falls into Scylla. If, so that anyone capable of error should have a superior on earth, it is necessary to place this power over the

¹³⁰ *De potestate ecclesiastica*, Consideration 10. OC 6 231.

¹³¹ Aristotle, *De anima*, III,2.

pope in the Church, who will correct the council itself, capable of error as it is? Indeed, it did in fact err in those decrees of Constance and Basel. It can err in many other things, on account of which an appeal from council to pope is allowed, as Saint Thomas says.¹³²

Concerning the Council of Basel, that it, although legitimately gathered, erred notoriously is shown from its words in Session II,¹³³ "The synod at Basel decrees and declares that it, legitimately gathered in the Holy Spirit for the extirpation of heresies, general reform of the Church's conduct in head and members, as well as procuring peace among Christians, should or could have been, ought or can be, shall or may in the future be dissolved, transferred to another place or put off to another time by no one of whatever authority, even if it were splendid with the papal dignity, without the deliberation and consent of this synod of Basel." There it appears most manifestly that, even in those things which are of positive law, such as the council's time and place, they determined that the supreme pontiff does not have power, even before that synod was gathered there at that time, which is so erroneous that it is not worth an argument.

Therefore, I have advanced this one point to show that a council, even one rightly gathered by the Roman pontiff's authority, in his absence or without his consent to the decrees, can err and has erred. It can be learned from this one manifestly false decree at the beginning of that council just how much authority all its decrees possess. Augustine¹³⁴ says that, if the least falsehood were admitted in sacred Scripture, the whole of it perishes.

Second, because the true end of ecclesiastical power, unity of faith, charity and peace, by which the Church is one and arrives at [its] heavenly home, is better achieved by one than by many gathering as one.

Third, because that position derogates excessively from the dignity of the supernatural order, as if, just as, in the natural order, God created man free and left him to be governed by his

¹³² *Quaestio de potentia Dei*, q. 10 a. 4 ad 13 *Opera* (Parma), vol. 8, pp. 212-13.

¹³³ COD 457.

¹³⁴ Ep. 28, m.3. PL 33 112-13.

own counsel, as a result of which a free community establishes a king with certain laws, tacit or expressed, so Christ organized the supernatural government of the Church, giving the community power over the prince. Far from it, for the security of the supernatural government is founded not on human counsel but on supernatural divine assistance; and, for this reason, so that infallibility may be followed unfailingly, the explanation of supernatural government rejects recourse to the power of the community.

Fourth, because, since grace, in its way, perfects nature and divine wisdom *ordereth all things sweetly* [Wisd. 8:1], it is necessary that the Lord Jesus Christ disposes the government of His Church as one who [is] alive, not dead. For this reason, it was not before His death but after [His] resurrection – to die no more for all eternity – that He established Peter, not as His successor, but as His vicar. It is a common practice for all princes when appointing vicars during their lifetimes not to give the commonwealth power over the vicar but reserve [such] judgment to themselves. The Lord Jesus Christ, therefore, did not give power over His vicar to the community of the Church; but, revealing to [Peter] that His assistance would not fail, *I have prayed for thee, that thy faith fail not* [Luke 22:32], He committed the strengthening of others to him, adding, *Confirm thy brethren*. This argument, although it is drawn more from the government's means than its ends, nevertheless, shows that, to achieve the Church's end, it is not appropriate, on the basis of its form of government, to locate such power in the Church.

Therefore, that power over the pope placed in the Church does not befit its rule through a vicar under a living Jesus Christ. It derogates from the supernatural character of ecclesiastical judgment. It is inappropriate to the true end of the Church. It does not achieve the intended purpose of correcting all who are capable of erring. It is repugnant to the formal reason for the papacy and obstructs the assistance Christ gives the pope's judgment in those things which are of the faith. It is maintained by no authentic authority or efficacious argument, and it is opposed by the testimony of a great many saints. [Accordingly,] we must conclude that to preach, write or defend it is vain, ignorant, rash and impious.

Chapter XII

That, without the pope, there is no legislative power in the Church

Since, apart from the said power, [Gerson] locates two others in the Church apart from the pope, namely, the power of applying ecclesiastical powers to persons and the power of making and authoritatively interpreting laws, something must be said about them.

The Church's authority to make laws belongs to it, according to him, from the fact that it is a perfect community. Accordingly, as any free and perfect community can make laws and the laws it makes can be changed only by its own authority, this also is necessary in the Church.

So that this error may be exposed briefly, having left aside [the point] that the Church is not a perfect community without the pope, because it would be without a head, we say that, because the Church as a whole distinct from the pope is a community subjected to the pope by Jesus Christ, as is obvious from the texts cited, which witness to his being shepherd, ruler, bishop and guide of all Christians and of the universal or catholic Church, it follows that the Church, even if it could ordain like any society, nevertheless, could not establish anything having coercive force, not just about the pope's acts but about any Christian, unless by reason of its prelates' authority, if they agree to this. If [such things] are enacted *de facto*, they are worth nothing, unless they are ratified by the Roman pontiff's authority implicitly or explicitly. Accordingly Saint Thomas, as was cited above,¹³⁵ says, "The holy fathers gathered in a council can establish nothing except with the intervention of the authority of the Roman pontiff." As was said above, he said, "the holy fathers," rightly, because many fathers might enact measures from rashness, even binding the supreme pontiff's hands.

This is confirmed by the definition of law posited by Saint Thomas,¹³⁶ where it is concluded from what previously has been established that law is "the ordinance of reason promulgated for the common good by him who has care of the community." From this it is obvious that the Church's law is nothing other than the ordinance of reason promulgated by the pope, who has care of the ecclesiastical community; and, for this reason, the community of

¹³⁵ See above n. 66

¹³⁶ Ist II^{ae} q. 90 a. 4. *Opera* (Parma), vol. 2, p. 332

the Church, care of which was not left to itself by Jesus Christ but was committed to the pope, cannot make laws authoritatively.

The holy fathers, knowing this, recognized that the strength of their decrees was from the pope, as is witnessed by the fact that, even after this error had arisen, following Martin V's election, the king of Poland's envoys requested that the things decided in a matter of faith should be approved [by him], as is obvious from that last session.¹³⁷ Those at Basel pressed vigorously for Eugenius IV's approval of the decrees of the Council of Basel's and never obtained [it], as lord Juan de Torquemada¹³⁸ says and as appears in the council's records.

Further, the Church's determinative authority concerning those things which pertain to the faith resides principally in the supreme pontiff, and not just principally but finally, so that final determination concerning the faith belongs to him; nor does it require a council. But the council's decision is confirmed by the pope; and an appeal lies from council to pope, as Saint Thomas teaches in the texts cited.¹³⁹ Therefore, *a fortiori* establishing other things belongs principally and finally to the pope; and it would be vain to appeal to him from the council unless he could administer justice over the council.

Further, the custom of the Church is and has been that the pope can not only dispense but change laws in all things which are not matters of natural or divine law. Therefore, he does not depend on the council in interpreting, but the converse. From this it is obvious that c. *Frequens*,¹⁴⁰ decreed in the Council of Constance, unless it were confirmed by apostolic authority, has no certain, obligating force, since it was issued in Session xxxix before Martin was elected.

Chapter XIII

That the Church apart from the pope cannot grant
ecclesiastical power to an individual, except in
certain cases

Concerning the authority to grant the papacy and other ecclesiastical powers to this person or that, you must know that this power

¹³⁷ See above n. 70

¹³⁸ *Summa de ecclesia*, fols. 237^v-240^v II, c. 100 and fols. 312^v-314^v III, c. 34

¹³⁹ See above nn. 94-5

¹⁴⁰ COD 438-9.

resides, as a rule and primarily, in the pope and not, except in a certain case, in the council or the Church.

That this power is in the pope as regards the granting of powers inferior to the papacy is obvious both from what the apostles did, when they instituted individual bishops in [different] places, and from the Church's custom, which it accepts as an everyday matter without any scruple of conscience from the pope, who makes [appointments] by reason of his office: for full power of supreme rule and the reception of others into a share in the responsibility belong to him, as is obvious from Exodus 18[:25], where Moses, the people's leader, with Jethro's counsel, chose and *appointed [them] rulers of the people, rulers over thousands, and over hundreds, and over tens.*

In regard to granting the papacy, [the position] is obvious from what blessed Peter did when he instituted Pope Clement, as is held in c. *Si Petrus* [C. 8 q. 1 c. 1] from the authority of John III, who reigned around 600 AD in Emperor Justin's time, and from continuous practice, for the pope appoints those who have power to elect and changes and defines the electoral process so that anything to the contrary is void.

That this authority is not in the Church or the council apart from the pope is obvious from the fact that the whole Church cannot change authoritatively a law made by the pope, for example, that the election would not be a matter for true and undoubted cardinals, that one elected by fewer than two thirds of the cardinals would be pope and that the election would be a matter for such and such prelates and not for those who are called cardinals; for authority to remove [from office] belongs to him who has authority to appoint, in matters of positive law – such as [the rule] that the election is rather for the priests and deacons of certain churches in Rome, who are called cardinals, than for the canons of the Lateran and Saint Peter's, [and] for the bishops of Ostia, Sabina, Palestrina, Frascati, Albano and Porto, rather than for the other bishops. This clearly belongs neither to divine nor to natural law. If that power could be granted in the Church apart from the pope, the Church could change the pope's statutes concerning a conferral of this sort. And so, according to the truth, the council apart from the pope, because it can do nothing except what it can do through the individual powers contained in it, cannot appoint a single bishop, however

unimportant, if those prelates who have the right to appoint him are absent. The pope, however, can elect and make bishops anywhere on earth by his sole authority, which is not his own but belongs to Him, *that cometh. . . walking in the greatness of His strength* [Is. 63:1]

In a permissive case, however – when, for instance, the pope has established nothing to the contrary – or a case of uncertainty, – because it is not known if someone is a true cardinal – and similar eventualities – when the pope is dead or his identity uncertain, as seems to have been the case during the Great Schism which began under Urban VI, [in cases like these] we must assert that the power to grant the papacy to a person resides in the Church of God, after due inquiry has been made, to avoid perplexity. In such a case, this power seems to pass by devolution to the universal Church, as if there were no electors designated by the pope to represent it in this act for the good of the Church itself. That the care of the Church was committed by Christ not to itself but to Peter has been shown already; and, therefore, Peter's decision about exercising the act of election in the name of the Church would prevail over a decision and an act of the Church itself, in whose name, but not by whose authority, it is done.

God willing, the view to be taken concerning the power to depose will be treated below. What has been said here is intended to make it obvious that the council, apart from the pope, has power neither to regulate the exercise of papal power, nor to enact and interpret laws, nor to grant any ecclesiastical power to a person; rather it must beg all [these things] from the pope.

From these points it also emerges quite clearly that the council has no power to supply the deficiencies of the papacy. If one cites against this the actions of the Council of Constance, it has been said already that, because of uncertainty about the pope and the electors in respect of the requisites for the act of election, that gathering can be accepted after the union of the three obediences. Nevertheless, it could not be a perfect and undoubted council without a true and undoubted pope, and with one [of the claimants to the papacy¹⁶¹] opposing it. For this reason, its acts are not authentic except under

¹⁶¹ Benedict XIII

Martin V, under whom nothing was done by the council as before.¹⁴²

Chapter XIV

Answer to the arguments against the pope on the ground that the Church is the whole and has six times more authority

The statement that to compare the Church to the pope is to compare the whole to an integral part, when speaking of ecclesiastical powers – since these are our subject here, is very easily answered and shown instead to be sophistical, for it is a sophism.

For, just as unity is a part of number and the number six is even larger than unity than [it is] than duality, so the papacy, which is a single ecclesiastical power, is part of the whole number of ecclesiastical powers. In this way the Church's power is greater than the pope's, just as the whole [is greater] than a part; and this is to say that there are more powers than the pope's, which is conceded freely. But it does not follow from this that the Church's power is greater, that is, can do more than the pope [can]; and in this sense [the point] is disputed. Wherefore it is puerile [to argue], on the basis of the distinction of ecclesiastical power into the papacy, the cardinalate, the episcopate etc., that asking whether the Church is greater than the pope is a question whether the whole is greater than an integral part.¹⁴³ Again the statement, that the Church's authority is greater than the pope's in six ways, is false and erroneous, since, if the Church is understood apart from the pope, in no way is it greater than the pope, except in amplitude or numerical extent, because the pope is one power, [the Church], many. From this it has been shown that the papacy, apart from the pope, is not in the Church except ministerially in the power to elect, because, when the see is vacant, it can elect a pope through the cardinals, or by itself in a certain case. The papacy is the supreme power to which it belongs to settle cases about the faith; and whoever is certain does not need further certifying. It is erroneous to

¹⁴² Cajetan means that the council did not issue decrees like *Haec sancta* under Martin.

¹⁴³ See above nn. 108 and 112.

say that the final decision belongs not to the pope but the council; and all the more erroneous to the extent that it is said of the council as distinct from the pope.

Since divine assistance alone is the cause of unwavering direction and judgment in the Church, and this sustains the pope, and similarly the papacy is the power having coercive force over all other powers and virtually containing all power [in the Church], it follows that the Church is not greater in authority than the pope in the other five ways enumerated in Chapter X, rather the converse.

Thus it is obvious with what blindness Gerson was stricken, when he says that this conclusion, which we have proved erroneous, was deduced more clearly than light [itself] from the principles of theology. And again, how presumptuous he was when he called the doctrine of the saints, approved for fourteen hundred years, pestiferous and most pernicious. Nor is it excused, unless perhaps by affected ignorance, on the basis of a declaration of the Council of Constance, [promulgated by] only one obedience under John XXIII, a doubtful pope, and said also to have been a fugitive and protesting [against it].

Chapter xv

The opinion of others that the Church without the pope has the authority to summon a general council

Since the power to summon a general council is reckoned among the exclusive prerogatives of the Roman pontiff, while some think that this can belong to others, the council must, therefore, be particularly compared with the pope in this respect too.

It is the opinion of some, therefore, that, although summoning a council regularly belongs to the pope, as is obvious from c. *Significasti* [x 1.6.4] and throughout D. 17 in the *Decretum*, nevertheless, a general council can be summoned occasionally without the pope's consent, and even against his will. They base this on the principle that general rules allow for exceptions, especially since individual, variable cases arise in infinite ways, which is proved by equity [*epieikeia*]¹⁴⁴ and judgment [*gnômē*],¹⁴⁵ the virtues connected by Aristotle

¹⁴⁴ *Nicomachean Ethics*, v, 14.

¹⁴⁵ *Ibid.*, vi, 11.

with these exceptions. On this basis it is necessary to say that, when observation of the law would destroy the unity which is the end of law and harm the commonwealth, it should not be observed in every case; and, therefore, if the pope, when requested, refused to summon a necessary council, for that time the law that it is his prerogative to do so should not be observed, but the council can be summoned even against his will.

The said Jean Gerson¹⁴⁶ explains three specific cases in which the summoning of a general council can take place legitimately without the pope. The first is when he ceases to be pope, which can happen in three ways, by natural death, civil death – if, for instance, he becomes permanently insane, or if free access to him as a captive is blocked – or canonical death, namely, deposition. The second is when the pope, having been adequately requested to summon a council, contumaciously refuses to the Church's harm, especially if [the issue] affects him [personally]. The third is if the council, after being legitimately summoned by the pope, establishes a certain time and place for celebrating a general council, say, within a five-year period or every ten years, even where the pope refuses.

Concerning the council's authority without the pope, he says that it is supported by and possesses authority, first, that of Jesus Christ, the Church's unfailing head, second, that of His divine and natural laws, which allow this freedom to necessity, manifest charity or religious piety, for which there is the authority of the Lord, when He excuses the disciples for violating the sabbath, citing the example of David, [who ate the shewbread] on account of necessity [Mark 3:23].

There are also two cases posited by Felinus at c. *Super litteris*¹⁴⁷ and by Alexandrinus at c. *Synodum*.¹⁴⁸ The first is a case in which the pope can be deposed legitimately because, granted that power to depose the pope resides in the council apart from the pope, it must be able to assemble its scattered members, in order to depose him; otherwise, while a pope who must be deposed refused to summon a council, he could not be deposed. The second is when

¹⁴⁶ *De potestate ecclesiastica*, Consideration 12 OC 6 240

¹⁴⁷ Felinus Sandeus, *Prima in quinque decretalium libri pars*. (Lyons. 1547), fol. 148^{va} ad x 1 3.20. Pollei wrongly has ad x 1 3.10.

¹⁴⁸ Johannes Antonius de Sancto Georgio, provost of Alessandria, *Lectura in distinctiones decretalium*, Vat. lat. 2260, fol. 117^{va} ad D. 17 c. 1.

the pope's election is in doubt; otherwise, the Church would be perplexed when it did not know whether it had a pope and could not oppose [him]. The summoning of the Council of Constance was brought about in this way, although Benedict XIII refused to authorize a council, in so far as that was his concern

Chapter xvi

How to determine whether a Council can or cannot be summoned without the pope

To clear up the uncertainty we have encountered, you must know that it is one thing to speak of summoning and gathering persons from whom a council can be constituted and another to speak of summoning or gathering a council. The first only signifies assembling in regard to place, time, mutual meeting and the like. The second signifies an assembly to take authoritative action concerning the universal Church.

If we are dealing with the first of these, it has to be said that it is, as a rule, a matter for the pope, just as summoning the nobles of his realm is a matter for any prince; and, if a summons of this sort is issued without his knowledge, suspicion of conspiracy is aroused. Yet this is not the pope's prerogative to the exclusion of many cases in which it could be done best without his involvement and against his will. According to this view of the matter, the statement made by some can be embraced – that a council can be summoned without the pope and that the pope's power of summoning a council was introduced by positive law, as Alexandrinus said at the last canon of D. 17,¹⁴⁹ as far as it is the nature of positive law to suffer exceptions. Moreover, the question of the power to assemble in this way is an empty one when the fathers already have been assembled from all quarters.

But if we are dealing with the second way of assembling [a council], a distinction must be made: an authoritative council takes two forms – one that is perfect absolutely, the other perfect in relation to the present state of the Church. One composed of head and members is called a perfect council absolutely, and it can establish and regulate the universal state of the Church. One composed of

¹⁴⁹ *Ibid.*, fol. 121^v: ad D. 17 c. 6

those members who can be found when the Church is in a given condition is called a perfect council according to the present state, and it can involve itself with the universal Church only up to a certain point. In regard to both [forms of council] there may be latitude [as to their summoning]. An absolutely perfect council, however, may take place with the presence of the head through legates or in person; and the latter is perfect in the highest [degree], in regard to which there is no doubt that it cannot err in those things which are of the faith. When, however, a council takes place by means of legates, the pope [himself] remains, with the final decision in matters of faith (and, consequently, in all other cases) and with the power to confirm the council's judgment, as is obvious from what has been said. If [a council] had erred on some point – as the Council of Basel evidently did – it has the pope to correct it, just as that council had and has. A council perfect according to the present state of the Church also takes place in several ways, both when there is a single heretical pope to be deposed, and when there are several doubtful supreme pontiffs; the Council of Constance was of this sort.

Although, I say, there is a certain latitude in both [cases] as far as their summoning is concerned, yet their position is such that only the pope can summon a council which is perfect absolutely. Consequently, unless the pope is dead or a heretic, or else in some other way there is no pope, an absolutely perfect council cannot be held without the pope's consent; and, if it took place *de facto*, it has no authority.

The first proof of this is based on what has been said: namely, that the community of the Church without the pope does not possess papal power, except potentially (in the electoral process), as has been shown. An absolutely perfect council actually includes papal power; therefore, this council is not absolutely perfect. The second proof is that, if the community of the Church without the pope constituted an absolutely perfect council, given that such a council has the function of regulating the universal Church absolutely (which, manifestly, is the proper role of the vicariate of Jesus Christ), it follows that the community of the Church would be the vicar of Christ, and so Jesus Christ would have two vicars representing Him on earth. The pope would not be Jesus Christ's vicar immediately; but he would be the vicar of a vicar on earth, namely,

that of a headless council; and that is not just erroneous, but false. The third proof is that the pope alone, having care of the universal Church, has power to decide concerning the faith, ordain a creed and summon a council, as Saint Thomas¹⁵⁰ proves in the aforesaid question, on account of the unity of the faith; just as care of the universal Church belongs to the pope alone by divine law, so do those matters which are directly related to that same care of the universal Church.

This argument is confirmed from the teachings of the same Saint Thomas,¹⁵¹ namely, that matters decided by God Himself in divine law, not only in the common process of justice, but also in its application to individual acts, cannot be dispensed by the prelates of the Church but by God alone. For example, because simple fornication, that is, with someone not one's own wife, is prohibited by God, the Church cannot ordain that such intercourse with someone not his own wife sometimes is licit; God alone, however, can do this. God placed the care of the universal Church in Peter alone, and in his successors, and did not leave the Church care of itself. That summoning and celebration of a council is part of the care of the universal Church is obvious from [the council's] preeminent role. Therefore, God alone can dispense in this matter.

Neither equity nor judgment has a place here, since it is said expressly in the *Ethics*¹⁵² that [equity] is the direction of legal justice, which we call positive law. [Positive law,] because it is from man, being unable to foresee and provide for particular events, may fail in some cases; and then judgment in the practical intellect and equity in the will make good [these deficiencies] not by interpreting what is ambiguous but by examining and choosing what is manifest, as Saint Thomas explains.¹⁵³ This rule, therefore, is not like those of conduct, grammar, civic or canon law, but is of divine law, which does not admit exceptions. That is how we are to understand what is said in D. 17; and, therefore, Saint Thomas said that the holy fathers assembled in councils cannot enact laws without the intervention of the Roman pontiff's authority.

¹⁵⁰ See above nn. 94–5.

¹⁵¹ I^a II^{ae} q. 100 a. 8 *Opera* (Parma), vol. 2, pp. 372–3.

¹⁵² *Nicomachean Ethics*, v, 14.

¹⁵³ II^a II^{ae} q. 120 a. 1 ad 3 *Opera* (Parma), vol. 3, p. 420.

A perfect council according to the present state of the Church can be summoned without the pope and against his will, if, although asked, he does not wish to summon it; but it does not have the power to regulate the universal Church, but only to provide for the issue then at stake. Although human cases vary in infinite ways – for instance, if all the papal electors died, if something should happen so that the electors could not elect without convocation of a council to rebuke, discern or pacify etc. – setting aside these and the like, there are only two cases which have occurred or can ever occur, in which, I declare, such a council should be summoned. The first is if a pope must be deposed on account of heresy; for then, if he refused, although asked, the cardinals, the emperor, the prelates can cause [a council] to be assembled, in which will reside not the care of the universal Church but only the power to depose the pope; and election will pertain to the cardinals alone, to whom it belongs by law. This will be proved below when we deal with the pope's deposition. The second is when one pope or several labor under uncertainty in regard to [their] election, as seems to have arisen in the Great Schism of Urban VI and the others. Then, lest the Church be perplexed, those members of the Church who are available have the power to judge which is true pope, if it can be known, and, if it cannot be known, the power to provide that the electors agree on one or another of them. If the electors cannot be identified, since the election devolves to the Church on account of that lack of electors, such an imperfect council will elect, as seems to have been the case in Martin V's election at the Council of Constance.

In the other cases recounted, no necessity for such a council is apparent. For, if [the pope] is permanently not of sound mind, this follows: another can be elected by the cardinals, since the pope is dead to rational life, not just at the moment, like a sleeper, a drunk man or one who is delirious, but in natural potential. Now it is obvious that the pope is elected as shepherd of the Church on account of the life of reason; and, therefore, there is no need to *tremble where there is no fear* [Ps. 52:6 (53:5)]. If there is doubt concerning his recovering [his] sanity, one must wait, just as in everyday ailments.

Also, in view of the uncertainty of events, this could be dealt with by a statute of the pontiff, namely, if it were decreed that,

when a pope has become insane, there should be a certain waiting period; and, if, afterwards, no sign of his recovering sanity appears, and he is judged incurable by a group of physicians, he is adjudged dead and the apostolic see vacant. By the fact that someone accepted the pontificate under this law and did not revoke it, he would acknowledge that, should such a case arise, he would either resign by tacit consent or accept deposition; and so, should [the pope] become sane after another pontiff was elected, he could not seek to recover the papacy, which he had lost once and for all by due process.

If the pope were a captive and free access to him were blocked, another must not be appointed, for *Peter . . . was kept in prison* [Acts 12:5], free access being blocked, as is obvious from the Acts of the Apostles, nevertheless, another was not elected, but prayer offered *without ceasing by the Church unto God for him* liberated him. *The Lord's hand is not shortened* [Is. 59:1], nor is a term set for the Lord within which He ought to liberate the pope, as Uzziah did when he spoke to the men of Bethulia; and they were rebuked by Judith, saying, *You have set a time for the mercy of the Lord, and you have appointed Him a day, according to your pleasure*, as is obvious from Judith 7 and 8 [especially 8:13]. Nevertheless, in this and the preceding case it could be provided in a pontifical statute that one should be elected by the cardinals to act on the pontiff's behalf in and for all things while he is mentally unfit or in prison. Then the one chosen could do all things in both forums, just as now the supreme penitentiary can absolve in the forum of conscience by the law's authority when the pope is dead, mentally unfit or in prison.

However, in a case in which a pope, a certain and undoubted heretic, when requested, refused to summon a council and there were a statute of a general council with all derogating clauses,¹⁵⁴ as those at Constance began using and those at Basel used, I do not know what purpose such an assembly would serve, since it could do nothing which a pope who wished to resist could not annul. Therefore, the opinion that a perfect council, one having the authority to dispose and decree absolutely for the universal Church, could be celebrated or summoned without the Roman pontiff's authority, must be regarded as erroneous, because it would derogate

¹⁵⁴ These clauses forbid infringement of a law by any lesser authority.

from the exclusive privilege of papal power granted to him immediately by Christ, as is obvious from what has been said

To those who say that, because the Council of Constance in Session xxxix¹⁵⁵ and, afterwards, that at Basel in Session xi¹⁵⁶ issued *c. Frequens*, therefore, even against the pope's will, a council – even a perfect one – can be celebrated every ten years on account of the authority of that statute, the answer is that they are in great error and that, in truth, such men labor for schism and can be punished as schismatics, if they were to act thus, since they are rebels against the Roman pontiff, who is above all positive law; and it is plain that deciding the time and place for a council is [a matter] of positive law. If any doctors are found who think that, because the time is pressing, authority is devolved to others and such like, either they are followers of the error which regards the council as superior to the pope, or they are saying that this statute is in force so that the pope cannot thus take away, interpret, dispense or prohibit it.

In regard to denial of consent by a pope who has been asked to summon a council, because it is a matter of such weight, you must know that it is necessary to use discretion here. For, if it is required by honest men, commended by [their] past and continuing integrity of life and conduct, and there is reason for a council, such as heresy or schism, the pope should yield; and I simply do not believe that there [ever] has been a pope who has refused in such circumstances. If, however, it is required by men who wish to *bind burdens* upon others and *with a finger of their own will not move them* [Matt. 23:4], who do not observe the statutes of the ancient councils, [men who are] ambitious, insatiable, followers of their own passions and the like, in the name of reform, does not Christ's response apply, *Thou hypocrite, cast out first the beam out of thy own eye, and then shalt thou see to cast out the mote out of thy brother's eye* [Matt. 7:5]? In particular, the pope acting alone is better able to reform the Church, beginning on his own initiative with himself and his household, rather than by means of a council. For it is necessary first to observe the existing written laws and then to draft other statutes.

Also, probable fear of the council's usurping authority over the pope is sufficient cause for denying consent to a council. Those at

¹⁵⁵ See above n. 140.

¹⁵⁶ COD 466.

Basel soon showed this twice, namely, when the council first was begun, in Session II, and again when it was reconstituted by Eugenius IV, in Session xviii.¹⁵⁷ The purpose of a council is peace, which is disturbed by that usurpation, as is witnessed by experience, that universal teacher.

From these points it is obvious that, between the extreme opinions concerning the summoning and celebration of a council without the pope's consent, the middle way alone is true, as we have stated it, namely, that an absolutely perfect council never can be, but a perfect council according to the present state of the Church sometimes can be gathered and celebrated without the pope and against his will. According to this distinction, you can,¹⁵⁸ if you wish, reconcile the different statements made by the doctors.

Chapter xvii

The comparative powers of Church and pope in cases of heresy: first, how the pope, according to one opinion, is subject to the council when charged with heresy

Following the comparison between the power of the pope and the authority of the Church and of the general council in simple and unconditional terms, and the demonstration of the superiority of the pope to the universal Church and universal council, the authority of the council must next be compared to the pope in [specific] cases, first, in a case of heresy, then in one of incorrigibility and other cases and, finally, in certain contingencies.

Since it is natural for us [to follow] the way from things more certain to us to less certain ones, let us suppose, following the doctors and the common understanding of c. *Si papa* [D. 40 c. 6], that the pope can be deposed by a general council for the crime of heresy; and let us investigate the means of deposition and the power to depose, so that we can know whether the pope is subject to the council or the universal Church in certain cases.

Concerning the way in which a pope is deposed for the crime of heresy, opinions vary. Some say that this is done on account of a

¹⁵⁷ See above n. 41

¹⁵⁸ Reading *potest* as *potes*

defect in the incumbent [of the papacy]; for (they say) the incumbent of the papacy is a believer, and, accordingly, just as, when [his] bodily life fails through death, he ceases to be the incumbent of the papacy, likewise if, through heresy, faith fails in the man who is pope, he ceases [to be] the incumbent of the papacy. The basis of this opinion is that faith makes a wayfarer a member of Christ's Church. To this they add another proposition: namely, that, in matters essentially ordered in accordance with the formal cause, denial of what is prior [in that order] entails denying what is posterior [or dependent]. This is inductively obvious – for if there is no [such thing as an] animal, there is no [such thing as a] man, and if there is no color, there is no white, and so on. Now being a member and being the head are essentially ordered so that being a member is prior to being the head, as is obvious, because the head has to be a member, and not the converse; therefore, if the head is not a member, it is not the head. Thus, a man lacking faith, such as a heretic, is not a member of the Church; therefore, he is not its head. For this reason, then, since the pope is nothing other than the Church's head, in so far as he loses [his] faith, he cannot be pope. This is what is said by others in other words. when the pope becomes a heretic, he is deprived of the papacy *ipso facto* by divine law, according to which the distinction between believers and unbelievers is made. When he is deposed by the Church on this account, it is not the pope who is either judged or deposed, rather he who has been judged already because he does not believe (in accordance with what the Lord says in John 3[:18]) and who already has been deposed, since, having become an unbeliever, he has been removed by his own will from the body of the Church, is [formally] declared judged and deposed.

They buttress the first proposition [that the pope is deposed *de facto*], the root of their opinion – the only part of this argument which can be denied – with many texts, some [based] directly on the nature of faith and the Church, some on the consequences of being outside the faith and the Church.

Four texts about the nature of faith are cited. First, the Savior's, *Upon this rock I will build My Church* [Matt. 16:18]. Whether one understands by the rock Christ, Peter or the confession of faith, it leads to the same thing in regard to faith, for [faith] always is found to be the foundation of the Church. The second is Habakkuk 2[:4],

the apostle in Romans 1[17] and Hebrews 10[:38], *The just man liveth by faith*. Just as life for the living is being in the natural order, so living in the Church is being in it. Living well, however, is based on charity. The third is the apostle's, *Faith is the substance of things to be hoped for* [Heb. 11:1]. Substance occupies the first place [in the order of being]. The fourth is Saint Thomas,¹⁹ who expressly says, "Unbelievers do not belong to the unity of the body of the Church, by reason of which it is, simply, one; and, therefore, in respect of them, Christ is [their] head only potentially, in so far as they are capable of union with the body."

In regard to the Church, the definition of [the term] "church," namely, the collective of the faithful, is cited from c. *Ecclesia* [De cons. D. 1 c. 8].

Next, in regard to the consequences of being outside the faith and the Church, many texts can be cited saying that, as a result of being outside the faith and the Church, the sheep become and are outside the communion of the faithful, without the keys, power, honor, the pastoral office. [The following texts] banish heretics from the communion of the faithful. First, the Lord says, *Depart from the tents of these wicked men* [Num. 16:26], namely, the schismatics Dathan and Abiram, for it is obvious that all heretics are schismatics. Then Paul says, *[If] an angel from heaven preach a gospel to you besides that which we have preached to you, let him be anathema* [Gal. 1:8], and, *We charge you, brethren, in the name of our Lord Jesus Christ, that you withdraw yourselves from every brother walking disorderly, and not according to the tradition which they have received* [2 Thess. 3:6], and *Bear not the yoke with unbelievers. What participation hath justice with injustice? Or what fellowship hath light with darkness? What concord hath Christ with Belial? Or what part hath the faithful with the unbeliever?* [2 Cor. 6:14-15]. Finally, John the evangelist says, *If any man come to you, and bring not this doctrine, receive him not into the house nor say to him, "God speed you,"* [2 John 1:10].

Ambrose explains the loss of the keys in pastoral matters, found in c. *Verbum* [De poen. D. 1 c. 51], "The Lord wished there to be equal power to bind and loose"; and he adds, "It is certain that both are licit for the Church; heresy has neither." Cyprian proclaims loss

¹⁹ In III Sent. D. 13 q. 2 a. 2 q. 3 Opera (Parma), vol. 7, pt. 1, p. 145

of honor and power in c. *Novatus* [C. 7 q. 1 c. 6], "Whoever observes neither the unity of the Spirit nor the communion of peace and separates himself from the bond of the Church and the college of priests can have neither the power nor the honor of a bishop." And he says in c. *Didimus* [C. 24 q. 1 c. 31], "All heretics and schismatics entirely lack power and right." Gelasius says the same in c. *Achatius* [C. 24 q. 1 c. 1]. Saint Thomas¹⁶⁰ expressly says the same thing, insisting that the power of spiritual jurisdiction does not remain with heretics in respect of either its exercise or its substance, so that, whatever they may have done, nothing is achieved. Augustine¹⁶¹ denies [heretics] the office of feeding sheep in the sermon on the shepherds, dealing with the text, *Feed thy goats* [Cant. 1:7], saying, "To Peter, who remains, is said, *Feed My sheep* [John 21:17], to the heretic, who departs, *Feed thy goats*." And he repeats the same opinion in the letter to Vincentius.¹⁶²

From all of these the basic proposition that faith makes one a member of the Church is self-evident. If, apart from positive law, as we say, they remained members in their places despite loss of faith, communion would not be withdrawn from them, nor honor, nor power, nor office, as is self-evident. Indeed withdrawal of power alone suffices for the purpose, because the pope is constituted by the power of jurisdiction alone.

This argument is confirmed by the fact that a heretic pope is excommunicated, as is obvious from the [ordinary] gloss on c. *Achatius* [C. 24 q. 1 c. 1], which says, "This is a case in which pope can bind pope, in which a pope falls under a canon imposing a sentence." Nor does the rule that equal cannot loose or bind equal¹⁶³ matter, because, if the pope is a heretic, he is less than any catholic, as is found in c. *Scimus* [C. 12 q. 1 c. 9]. Huguccio¹⁶⁴ says the same at c. *Inferior*.¹⁶⁵ Even he is subject to accusation; indeed the [ordinary] gloss on c. *Si papa* [D. 40 c. 6] says that the pope cannot make a law that a pope cannot be accused of heresy. He is subject to judgment, as is held in the said c. *Si papa*. All these things argue that a heretic is not pope but an inferior.

¹⁶⁰ II^a II^{ae} q. 39 a. 3: *Opera* (Parma), vol. 3, p. 155

¹⁶¹ Sermon 46, xv, 37: CC 41.565

¹⁶² Letter 93, ix, 29: PL 33.336.

¹⁶³ See above n. 129.

¹⁶⁴ The text has *Hugo*

¹⁶⁵ Ordinary gloss to D. 21 c. 7

Saint Thomas, arguing to the same end,¹⁶⁶ when dealing with that text in Galatians [2:11] relating how Paul opposed Peter to his face, says that prelates should not be corrected by subjects in the presence of the multitude unless there is imminent danger to the faith. In that case the prelate would become an inferior, if he lapsed into unbelief, while the faithful subject would become the superior. It is obvious that we are speaking not of superiority or inferiority in charity, since this is common to every mortal sin, but [of superiority or inferiority] in power, in respect of which a prelate is superior to a subject. Therefore, [the consequence follows] as before.

From these points it can be inferred that, in both ways in which an undoubted pope, while living, can cease to be pope, there is the same source of deposition, namely, the will of the one who himself is pope. For he abdicates being the Church's head by a voluntary act of will; he gives up being a member of the Church, and, consequently, being head, by embracing heresy of his free own will. Thus there is no certain way of ceasing to be pope while still alive, which supports the view that a pope is deposed against his will; and, for this reason, they say that it remains firmly established that a pope, as long as he remains pope, has no power superior [to him] on earth.

Chapter XVIII Another view of a heretical pope's subjection to the council

Although the position which we have stated is held by illustrious men and seems to be common, nevertheless, it does not please everyone. Some oppose it for two reasons, advancing two propositions. The first is that a heretic pope is not deposed *ipso facto* but must *be* deposed. The second is that a heretic pope remaining pope has a superior judge on earth, the universal council.

Although they prove the first proposition in many ways, only four [texts] are cited, because its force lies in these. First, from the case of Marcellinus and the [ordinary] gloss to c. *Nunc autem* [D.

¹⁶⁶ In IV Sent. D. 19 q. 2 a. 2 qa. 3 ad 1 Opera (Parma), vol. 7, pt. 2, p. 852, treating Gal. 2:11

21 c. 7]: he was not deposed by [the fact of his] idolatry¹⁶⁷ and was a saint. The gloss cites Huguccio, who says, "Because he was prepared to be corrected, he was not deposed, as the apostle says in C 24 q. 3 [pr., citing 1 Cor. 5:11]." Second, from c. *Audivimus* [C. 24 q. 1 c. 4], where it is said of a heretic bishop, "If he devised a new heresy in his heart, on account of which he began to preach such things, he could condemn no one [for rejecting it]." Therefore, before he preached that heresy, he could condemn [others]; and so he was not deposed *ipso facto*. Third, because other prelates are not deprived [of office] *ipso facto*, but, having recourse to penance, have retained their prelaties. Therefore, neither [is] the pope [deposed *ipso facto*], since he is not in a worse situation. The assumption is obvious from c. *Maximum* [C. 2 q. 7 c. 19] and C. 2 q. 1.¹⁶⁸ Fourth, because, as is obvious from c. *Cum ex iniuncto* [x 5.7.12], appointment and deposition pertain to the same [authority]; the pope's appointment is a matter for the electors; therefore, [his] deposition [is too]. Therefore, a pope is not deposed without a judgment by the electors.

They prove the second proposition, that a heretic pope remaining pope has a judge on earth, the universal Church, thus, in regard to the first part. A heretic pope must be accused and judged by all, as is held in c. *Si papa* [D. 40 c. 6]; and he is not deposed *ipso facto*, as has been proved. Therefore, he has a judge before whom he should be accused and by whom he should be judged. As for the second part, [they prove it] from the fact that the universal Church or universal council is superior to the pope in this case, as is commonly held.

Chapter XIX

An examination of the proposition that a heretic pope *ipso facto* is deprived of the papacy

Having stated the two contrary ways of saying how a heretic pope ceases to be pope, the first question to be considered is whether the proposition which is the basis of the first way is true. It is, in fact,

¹⁶⁷ Reading *idolatra* as *idolatria*.

¹⁶⁸ The text has 1 q. 7. *Maximum*, II, q. 1 (*sic*) cop. *Quotquot*.

easy to show briefly, that it is, absolutely speaking, false, although, taken in a certain sense, it may perhaps be true.

We will show, therefore, that a heretical pope is not deprived [of the papacy] *ipso facto* by either divine or human law for such a reason. Other bishops, if they become heretics, are not deprived *ipso facto* by divine or human law; therefore, neither is the pope. The conclusion is obvious, because the pope is not in a worse situation than other bishops. The assumption is proved thus: a bishop who, solely by an internal act, believes contrary to the faith is truly, properly and completely a heretic; but he is not deprived *ipso facto* of the power of jurisdiction. Therefore, a completely heretical bishop is not deprived *ipso facto*.

There are two propositions in this argument. First, that he becomes a heretic completely by an internal act alone. This is manifest *per se*, because heresy is a mortal sin opposed to the faith, which consists completely only of an internal act the effect of which is open profession, according to *With the heart, we believe unto justice; but, with the mouth, confession is made unto salvation* [Rom. 10:10]. The second [proposition]¹⁶⁹ is proved, because the power of jurisdiction resides in the man who is a bishop simply by man's appointment, as Saint Thomas expressly says.¹⁷⁰ The point is deduced from this: a bishop who is a heretic only by internal act is subject to the judgment of no man on account of this, because judging concerning things purely internal belongs to God alone, according to *Man seeth those things that appear, but the Lord beholdeth the heart* [1 Kings (1 Sam.) 16:7], and the apostle says, *Judge not before the time; until the Lord come, who both will bring to light the hidden things of darkness, and will make manifest the counsels of the hearts* [1 Cor. 4:5]. On account of this, such a heretic is not excommunicated; the Church cannot excommunicate what it cannot judge; therefore, much less is he deprived of the power of jurisdiction, which is by man's appointment. Both giving it and taking it away belong to human judgment. I said, "much less," because more is required to incur deprivation *ipso facto* than to incur excommunication, since incurring censure does not require a declaration, as incurring deprivation does, according to the jurists.

¹⁶⁹ That a heretical bishop is not deprived *ipso facto* of the power of jurisdiction

¹⁷⁰ *II^m q. 39 a. 3: Opera* (Parma), vol. 3, p. 155

For this reason, I do not see how this argument can be answered, unless it is said that the power of jurisdiction is not from man, which, first, is against Saint Thomas and, second, against the opinion of all the catholic doctors, who opined that all jurisdiction flowed and flows from Peter into all the rest of the Church's body, according to Pope Leo's saying in c. *Ita Dominus* [D. 19 c. 7], "The Lord so wished the sacrament of this gift to belong to the office of all the apostles that He placed [it] principally in most blessed Peter, the chief of all the apostles, so that from him, as from a head, He might pour out His gifts, as it were, upon the whole body." There are as many texts and arguments supporting this view as [there are] to demonstrate the unity of the head and prince in the Church Militant. Therefore, I will not linger over the point but take it as having been firmly established.

It may be said that the comparison between the pope and the other bishops is not an equal one, because the power of jurisdiction in the other bishops is from man, whereas in the pope it is immediately from God. Therefore, it is right for the bishops, whose power is from man, not to be deprived *ipso facto* (since man sees those things which are external); and that the pope, whose power is from God alone, should be deprived *ipso facto*, because [God] *beholdeth the heart* [1 Kings (1 Sam.) 16:7]. This opinion is easily ruled out by distinguishing between the works of God and of man.

The power of jurisdiction in the papacy is immediately from God, according to *Whatsoever thou shalt bind on earth* etc. [Matt. 16:19]. However, that the papacy itself, which has this power, is vested in this individual is from man; the only exception is Peter, whom God Himself made [pope] – *Feed My sheep* [John 21:17], for this man is elected by man to receive the papacy. Since, when a pope is deposed, the power of jurisdiction is not taken away from the papacy, which would be to take away God's work, since, as is said, *The gifts of God are irrevocable* [Rom. 11:29], but the power of jurisdiction is taken away from this man in whom it was not placed immediately by God but through the mediation of human judgment. Therefore, the position of the pope and the other bishops is the same in regard to the loss of the power of jurisdiction derived from God or divine law. Since in both cases it is from God through the mediation of human judgment, it follows that it is not taken away by God directly, but through the mediation of human judg-

ment. For this reason, it is not taken away by that which, by its very nature, is not subject to human judgment, namely, heresy hidden in the heart alone.

That other proposition, namely, that the Church cannot concern itself with covert heresy, may give rise to hesitation, because the doctors say that even secret heretics are excommunicated, and because, in c. *Multorum* [Clem. 5.3.1], inquisitors who fail to act out of love or hate, are excommunicated – in which case the Church is judging concerning internal motives of love and hate. [In reply,] it can very easily be shown that heretics as such, subject to the ecclesiastical jurisdiction, are excommunicated on the ground of concealing their heresy, and not as heretics by internal act alone.

Accordingly, if anyone falls into heresy internally and, being alone, expresses that heresy to himself with spoken words in the merest whisper, he is excommunicated, although this is entirely hidden, because the act of speaking aloud in itself subjects him to human judgment as such, although [the act] may lack witnesses. In that Clementine and similar canons, internal acts are not judged according to their nature as purely internal, but rather in so far as they are cases of external commission or omission, for commission and omission belong to the same genus, just like affirmation and denial. We are dealing, however, with a purely internal heretic.

Many have erred in this matter from ignorance of this distinction between what is hidden by its nature and what only happens to be hidden. No wonder; for in matters that only happen to be the case even the wise may happen to err, as Aristotle said.¹⁷¹ Purely internal acts are in the genus of things hidden by their nature, because they are unknowable to human judgment by their own nature. External acts are of the genus of things which happen to be hidden, because they are accessible to human knowledge. They can indeed be perceived by the senses; but, if they take place without a witness, they are concealed. On account of this, as has been said, a purely internal act never is judged by the Church; but, when associated with an external act, it is judged. Accordingly, because the present argument is, to my mind, convincing, therefore, I conclude that this proposition, "The pope, when he is a heretic, is deposed *ipso facto* by divine or human law," is false.

¹⁷¹ *Metaphysics*, III,3

That this is as we say is confirmed even from those who think the contrary, since they say that the pope, although a heretic, if he is prepared to be corrected, is not deposed, as Huguccio says in the [ordinary] gloss to c. *Nunc autem* [D. 21 c. 7]. If a heretic is deposed from the papacy *ipso facto* by divine law, how does he become pope again? Also, how does he persevere as pope solely because he has not been deposed? Also, how is he not deposed? These points contradict the previous position, that he is deposed *ipso facto* by divine law, as is obvious.

Nor does it suffice to say that, when the Church does not depose, it reelects, both because it is false that non-deposition is reelection, as is obvious, and because the electors, to whom it belongs, if they were asked whether they wished to reelect, might say, "No!" or that they wished to reflect on the matter. But they do not depose, because the law seems to hold that, if he is prepared to be corrected, he is not deposed. Accordingly they bestow nothing on him by not deposing [him]; rather they sustain what he [already] has. If, again, he has nothing (as would follow from the previous position), there is nothing for them, deceived as they are, to maintain. Further, if anyone should accept this view of theirs as true – namely, that a pope who has become a heretic but is prepared subsequently to be corrected, is not deposed – it follows plainly that a pope who is a manifest heretic is not deposed *ipso facto*. Whoever is prepared to be corrected is not deposed; it follows that he had not previously been deposed.

Chapter xx

The reasonable opinion: a pope who has become a heretic is subject to the ministerial power of the Church, which, however, is not superior in authority

Three things have been established with certainty, namely, that the pope, because he has become a heretic, is not deposed *ipso facto* by human or divine law; that the pope has no superior on earth; and that, if he deviates from the faith, he must be deposed, as in c. *Si papa* [D. 40 c. 6]. Great uncertainty remains concerning how and by whom a pope who ought to be deposed will be judged to be deposed, for a judge, as such, is superior to the one who is judged. Accordingly the apostle says, *Who art thou that judgest another man's*

servant? To his own lord he standeth or falleth [Rom. 14:4]. Saint Thomas¹⁷² lays it down that a judge can only judge his subject, and the same point is made in the *Decretum* in c. *Inferior* [D. 21 c. 4].

For, if he is to be judged and deposed by a universal council, then it follows that the pope, while remaining pope, has the universal council superior to him, especially in a case of heresy. If, however, neither the council nor the Church is superior to him, then it follows directly that a pope who has deviated from the faith should be judged and deposed, and yet no one could judge and depose him, which is ridiculous. What shall we say, therefore, to avoid both extremes? The only course to take is toward the middle, which is hard to reach; virtue indeed consists of reaching that [goal], which commonly has led to the solution of many problems.

We say, therefore, that there are two extreme ways, both of them false: the one is that a pope who has become a heretic is deposed *ipso facto* by divine law without human judgment; the other is that a pope, while remaining pope, has a superior power over him on earth by which he can be deposed. The middle way too has a double aspect. On the one hand, it holds that the pope, although, absolutely speaking, he has no superior on earth, nevertheless does have a superior on earth in a case of heresy, the universal Church. On the other hand, it holds that the pope has a superior on earth neither absolutely nor in any particular case; rather, he is subject to the universal Church's ministerial power exclusively in regard to deposition.

The first way is founded on the Church's coercive and judicial power over Pope Peter in a case of heresy. It is necessary for him who is judged to be a subject and to be liable to coercion. This is the common view so far as I have hitherto understood the matter.

An argument against this view, however, is that, since the pope is superior to the council and the Church by divine law, as has been shown, then, if he is subject to it in a certain case, this exception must be made by divine law. No other, inferior law can make this exception, as is obvious. When, however, the case of heresy is excepted in divine law, the reference is not to subjection but to separation, as is obvious in the particular texts of sacred Scripture which have been cited: *Depart* [Num. 16:26]; *Anathema* [Gal. 1:8],

¹⁷² II^a II^m q. 67 a. 1 *Opera* (Parma), vol. 3, p. 252

that is, let him be separated; *Withdraw yourselves* [2 Thes. 3:6]; *Bear not the yoke* [2 Cor. 6:7]; *Receive him not. . . nor say to him, "God speed you"* [2 John 1:10]; *Avoid* [Tit. 3:10]. In short, nowhere do I find superiority and inferiority from divine law in a case of heresy, but [only] separation. Now it is obvious that the Church can separate itself from the pope only by the ministerial power whereby it can elect him. Therefore, the fact that it is laid down by divine law that a heretic should be avoided and banished from the Church does not create a need for a power which is greater than a ministerial one. [That power], consequently is sufficient; and it is known to reside in the Church.

This is confirmed on the ground that we must not ascribe to divine law what is neither expressly stated in it nor a necessary consequence of what is stated. Power over the pope in a case of heresy properly speaking is not part of divine law, nor does it follow necessarily from it; therefore. . . The minor [premise] is proved, for that it is not part [of divine law] is obvious, I think, to the reader. I say, however, "I think," because imminent schism¹⁷³ unexpectedly forced completion of this work within two months. That this does not follow [from divine law] is obvious from the fact that, since entities should not be multiplied without necessity, it is better to establish one principle than many. Since, therefore, a ministerial power is sufficient, there is no need for others.

The middle and true way, then, will be that a pope who has become a heretic and perseveres [in heresy] has a power on earth which is not his superior but a ministerial [power] to depose him. To elucidate this by beginning at a deeper level, three things must be posited: first, that three elements are found in the pope, the papacy, the person who is pope – Peter, for instance – and the conjunction of both – namely, of the papacy with Peter, from which results Pope Peter. Secondly, that by discerning and applying proper causes to their proper effects we find that the papacy is immediately from God, Peter from his father etc. However, the conjunction of the papacy with Peter, after the first Peter was instituted immediately by Christ, is not from God but from man, as is obvious because this is done by election by men.

¹⁷³ Cajetan is referring to the effort of the *conclabulum* of Pisa, summoned by Louis XII of France, to depose Julius II

A double human consent concurs in causing this effect, that of the electors and that of the one elected. It is necessary for the electors to elect voluntarily and for the one elected to accept election, otherwise nothing is achieved. Therefore, the conjunction of the papacy with Peter is not immediately from God but through the mediation of human ministry both on the part of the electors and that of the one elected. Nor does human ministry of this sort have power in itself in causing this conjunction, like the operation of what is active on what is passive, such as setting fire to stubble or applying the virtue of Christ's passion to a subject, as one baptizing and administering the sacraments does; for nothing active is applied here except the human will of the electors and the one elected. It would not be easy to imagine any other active [power in this case]. From the fact that the conjunction of the papacy with Peter is an effect of human will, since that is what constituted Pope Peter, it would follow that, although the pope depends on God alone for his being and becoming [a man], yet, Peter as pope depends on man for his becoming [pope]. For Peter is made pope by man, in as much as, having been elected by men, he himself, as a man, accepts [election]; and so the papacy is joined to Peter.

The third [point to be posited] is that, since nothing is so natural that anything made by certain causes cannot, contrariwise, be dissolved by them, as is said in c. *Omnis* [x 5.41.1], therefore, Pope Peter, the cause of whose being pope is his consent and that of the electors, can by the same consents – namely, his and that of the electors – operating in the opposite direction be deprived [of the papacy]. This already has been determined in the case of Celestine V, [who abdicated,] and in a decretal of Boniface VIII [vi 1.7.1].¹⁷⁴

From the three aforesaid [premises], the first certain and unhesitating conclusion is that Pope Peter depends on human power both in being made and unmade – not, however, on a power that is superior or equal to that of the pope, but, rather, an inferior one; for neither in making Pope Peter out of Peter-not-pope, nor in making Peter-not-pope out of Pope Peter, is any faculty but human will, that of the one elected and that of the electors, required. Nor does it matter for this purpose whether they are moved by good or

¹⁷⁴ Boniface, who succeeded Celestine, issued this decree to say that popes could abdicate

bad conscience, good or bad intention or cause; it is enough for the purpose that they hold to what was done, so that in truth Peter is or is not pope.

That this power is inferior to the pope's is obvious without any proof from the fact that, when the pope is dead, it is presupposed by no statute of positive law that this power is in the Church and extends to those things to which the supreme pontiff's authority extends; otherwise, there would be two supreme powers in the Church, and Christ would not have instituted a monarchic ecclesiastical regime. Again, since "Equal has no power over equal," the pontiffs could not impose on this power the way in which it should operate – by whom, and by how many, and in what way the election should be conducted, with provision for its nullification if it were conducted otherwise. These points show that this power is neither greater nor equal, but inferior to the pope's; for it is the right of superior power to deal authoritatively with the act of an inferior, so that it is worthless if it is done otherwise, as is found in this instance.

Second, it is held even more certainly that the ability to make or destroy the conjunction of Peter and the papacy is one thing, and having power over the pope is another. From the fact that a power less than the papacy, the simple will of the one elected and of the electors, can make and destroy this conjunction, and a power of this sort, since it is less than the papacy, cannot have authority over the pope, it is clearly proved that it is one thing to have power over that conjunction and another to have power over the pope. Accordingly power over the pope is found only in the Lord Jesus Christ; however, power over the conjunction of the papacy and Peter is found on earth, and rightly, because the papacy is the direct work of God, but the conjunction of the papacy and Peter is our work.

Nor should you, who profess philosophy, wonder that a power over the conjunction of form with matter is found which is not over the form, because the conjunction of form with matter follows the form. Your wonder will cease if you consider that the conjunction of form and matter can be achieved from both sides – namely, on the part of matter and that of form – and that someone who has power over the conjunction of form and matter, [either] in respect of both or in respect of the form, also has power over the matter,¹⁷⁵

¹⁷⁵ Reading *formam* as *materiam*

but someone who has power over that conjunction in respect of the matter need not have [power] over the form, as is obvious in the [case of] human generation. "The sun and man generate man,"¹⁷⁶ who consists of the conjunction of body [matter] and intellectual soul [form], or results from that conjunction; and it follows that sun and man cannot have power over the intellectual soul, which comes from outside, but [only] over that conjunction in respect of the body, which is the matter. This is the situation in the present case, for the papacy and Peter are related as matter and form; and only the Lord Jesus Christ can have power over their conjunction in respect of the papacy, and, consequently, in respect of both; therefore, He alone can limit and ordain the power of the pope. The Church, however, has power over their conjunction only in respect of Peter; and, therefore, it has no power over the pope, but only over the conjunction.

Since the removal of the pope, whether by renunciation, deposition or ejection,¹⁷⁷ is not dissolution of the papacy, nor of Peter, but of the conjunction of the papacy and Peter, for that reason it is necessary to keep before the mind's eye with utmost care and caution, as a rule [to be observed] when dealing with the removal of the pope, that a power superior to the pope is not required, but [only] one superior to the conjunction of Peter and the papacy.

That this may be more clearly obvious, you must know that it is certain that Pope Peter, while living, may be removed from the papacy in three ways: first, by ejection by the Lord Jesus Christ; second, by his own voluntary renunciation; third, by involuntary deposition by the Church, on account of incorrigible heresy. In all these ways, though differently [in each case], neither the papacy nor the pope ceases but only the conjunction of the two.

Because in the first way, ejection by the Lord Jesus Christ, that conjunction is broken by a superior power not just in respect of the conjunction but to the papacy, the Lord's authority is over that conjunction even in regard to the form. Moreover, because, as has been said, no other power is superior to the pope, and, because, for this reason, no other power can touch that conjunction in regard to the form, the consequence is that no other power can remove the pope as a power superior to him; on the contrary, this is the pre-

¹⁷⁶ Aristotle, *Physics*, II,2

¹⁷⁷ Reading *electionem* as *ejectionem* as in the next paragraph

rogative of our Savior. The dictum of Pope Anacletus in c. *Eiectionem* [D. 79 c. 11], saying, "The Lord reserved to Himself removal of the supreme pontiff," must be understood in this way. For the difference between the pope and other pontiffs consists in this, that other pontiffs can be ejected by a power superior to those powers of the [other] pontiffs, whereas the pope cannot, because power superior to the jurisdictional power of a bishop is to be found in the earthly Church, whereas there is none superior to the power of the pope. On this basis it is held that the Lord granted the power to remove them to the pope by granting [him] superior power; whereas He reserved the ejection of the pope to Himself, by granting no one power superior to the papacy. Accordingly, if Pope John should eject a bishop by plenitude of power, he would be ejected; nor would he have the power of jurisdiction any longer. No power was left by the Lord in the Church which could do this to Pope Peter.

In the second way, by renunciation, and the third, by deposition, that conjunction is dissolved not by a power superior to the papacy but one superior only to the conjunction, because neither the pope's will, nor that of the Church is superior to the papacy; the conjunction is made and dissolved by these [wills], as is obvious. Because, therefore, it is certain that a pope who has become an incorrigible heretic is not deposed *ipso facto* and must be deposed by the Church, [and because] the Church does not have power over the papacy, and the Church has power over the conjunction of pope and papacy in as much as it made [that conjunction], it is necessary to say that, when Pope Peter, having become an incorrigible heretic, is deposed by the Church, he is judged and deposed by a power superior not to the papacy but to the conjunction of the papacy and Peter.

Chapter XXI

A discussion of the aforesaid ministerial power to depose a heretical pope

Although, on the basis of what has been established, there are two capacities in the Church in respect of the conjunction between Peter and the papacy – namely, the capacity to make and unmake such a conjunction with consent on both sides; and the capacity to unmake

the same conjunction against the will of [a pope] who has become an incorrigible heretic – yet it is not evident that these two belong to one and the same power. Yet that was the conclusion reached in the previous chapter by means of division, because both had the same object, each being concerned with the same conjunction of the papacy and Peter. It is apparent that this is not only obscure but false in a number of ways.

First, from the nature of that power, for, when one complete cause composed from two partial ones is required for one effect, neither of those partial ones suffices for such an effect without the other, as is obvious in the bond of matrimony. Because two consents, those of the man and the woman, concur for the bond of matrimony, and its total cause is composed from the consent of both, neither suffices without the other to cause the bond of matrimony in the other. Now in the present case, two consents, those of the electors on the one side and Peter, the one elected, on the other, as partial causes concur to make or unmake the conjunction of Peter and the papacy; and both [act] together, as a complete cause. Therefore, neither consent on its own can achieve such an effect, making or unmaking the said conjunction. Because the power to depose a pope resisting incorrigibly on account of heresy includes only one consent, it follows both that this is not the same as that complete power, and that, if it is a part of it, it cannot depose, which is inconsistent with the power to depose. It is said wrongly that the power to depose the pope is [identical with] the power over this conjunction which the Church evidently has.

This argument can be confirmed as follows. If [a power] seems to pertain more [to an act] and [yet] does not, therefore, neither [does one which matters] less [pertain]. Now it seems as though Pope Peter's consent alone, rather than the consent of others alone, can make him cease to be pope, for he can abdicate; but Peter alone cannot do this, because, however much Peter himself may abdicate, he remains pope until his abdication is accepted. Conversely, however much Peter may have been elected, he never is pope until he has consented of his own free will to the election. These considerations show that the complete cause both of making and unmaking the conjunction of Peter and the papacy, which, in the Church, is inferior to the papacy, does not belong to the Church alone or to Peter alone, but depends on the joint consent of both; and, there-

fore, an unwilling pope cannot be deposed [by the Church] for any cause, for that involves a contradiction.

Second, it appears false from the manner of exercising such a power in act, since, according to c. *Si papa* [D. 40 c. 6] and the doctors, a heretic pope must be judged. That power, however, being inferior to the papacy, cannot cite, compel and, briefly, does not have coercive power over Pope Peter; therefore, it is inconsistent for the power to be inferior and to be a judge, in the same way, because it should be able to proceed by means of coercive force.

Third, it appears false from the object of that partial consent, for, since that partial consent on the Church's part belongs to the papal electors – who now are the cardinals alone, to whom it belongs to elect and accept renunciation, as is obvious in the case of Celestine V – it would follow that the power to depose Pope Peter, [when he had] become a heretic, would belong to them, whereas the opposite is what is commonly held.

But the answer to these points will still further confirm the proposition: for, if the consent of the one elected and the electors concurs in causing this conjunction, like the consent of a man and a woman in causing the bond of matrimony, the argument follows, since each consent acts as a partial cause contributing to effect the bond of matrimony. In this case, however, those two consents concur in different ways, for the consent of the electors acts as a cause making that conjunction; the consent of the one elected, however, acts to make the subject capable of that conjunction. He is not capable unless [he is] willingly a Christian. Just as being a believer is not the effective cause of that conjunction, so neither is being willing. This is obvious from the acquisition of other jurisdictional powers. When any prelacy is conferred on anyone, it is certain that, until he accepts it, he is not a prelate. His acceptance, nonetheless, does not in itself confer the prelacy; rather it renders the subject capable of prelacy. Thus the act of the one conferring [the prelacy] allocates the effect to a subject capable [of receiving it], conferring jurisdiction, which, according to the subject's disposition, might not achieve its purpose in him. The acts of active powers are exercised on passive things suitably disposed, as is said in *De anima*.¹⁷⁸

¹⁷⁸ Aristotle, *De anima*, II, 2

With the consent of the one elected concurring, therefore, to make the subject capable of conjunction with the papacy, it remains for the consent of the electors to make that conjunction; for it has been shown that it is not [done] immediately by God but through the mediation of human effort, which is the election of a suitably disposed subject. So it remains [to be concluded] from this that the power of making, or partly making, this conjunction resides in the electors and not in the one elected as such; for no one *takes the honor to himself but he that is called by God, as Aaron was*, as is said in Hebrews 5[:4].

A confirmation of this is that, if the pope by his abdication alone, without its acceptance by the church, cannot abdicate the papacy, this further strengthens the proposition that his consent was not one of its constitutive causes. The reason why acceptance [of his abdication] is required is that no one can renounce another's right, which the other has over him. No one who is bound to another by a pact to pay a hundred [quarters of wheat: cf. Luke 16:7] can renounce this bond without the agreement of the one to whom he is bound, although at the beginning he obligated himself by his own will. Now the pope, by accepting the papacy, obligates himself to the Church for its government, and, therefore, he cannot renounce the right which the Church has over Pope Peter against the will of the Church, to which he is bound. This is confirmed, further, because the papacy is not joined to him for his own sake but for the sake of the Church, for the Lord, when establishing Peter as the first pope, says this and nothing else, *Feed My sheep* [John 21: 17]. And, therefore, it is not true to say that it seems more appropriate, in regard to the consent of the one elected alone, that he should be able to dissolve [that conjunction], for he himself is not even a partial efficient cause of this conjunction; but only the disposition of the subject [to dissolve the conjunction is involved].

The answer to the second point on which the whole force of this matter depends is that this power, [which is] inferior to the papacy, has coercive force not over Pope Peter but over the conjunction of the papacy and Peter, not absolutely but in a case of heresy. Thus this power relative to the pope is ministerial; it is authoritative relative to making or unmaking the conjunction of Peter and the papacy, granted that the subject is properly disposed. So a definitive

sentence proceeding from that authority over the conjunction of Peter the heretic, as matter, with the papacy, [as form,] dissolves that conjunction authoritatively. Just as election by the Church, being authoritatively over the conjunction, not over the pope, joined Peter, suitably disposed (that is, a believer and willing [to be elected]), with the papacy, so such a sentence dissolves [the conjunction], for it acts on matter [differently] disposed by heresy. We have an example of these [points] in the natural order, since a man is generated and corrupted by an agent having no power over his soul but [only] over the conjunction of soul and body on the part of matter.

If anyone should ask how the aforesaid effects result from a sentence of deposition, given that Peter remains superior until that [sentence], it could be said that, because neither God nor nature fails in necessary things, the same authority extends to all the preconditions. I do not regard any of them as requiring coercive power over Pope Peter; it is sufficient for [the powers] to be declaratory, admonitory and the like. This judgment, being based not on his own confession (extracted by commands, censures or torture), but on the evident fact or open profession of incorrigible heresy, is expected, which happens without his being coerced.

If anyone should say that it is inappropriate for this inferior power to be able indirectly to force the preconditions necessary for a sentence upon Peter, I do not see how it could err, since Pope Peter, an incorrigible heretic, already is on the way of destruction; and God, *Whose works are perfect* [Deut. 32:4], and Who never fails in necessary things, would not have given the Church a power to depose in a case of heresy without the necessary preconditions. I add that I leave it to the jurists to discuss whether any coercive preconditions would be necessary for judgment. But let them take careful note of the fact that I am speaking only of things necessary for this judgment, and not of necessities arising from incidental events or from other things extraneous to the judicial process.

The answer to the third point is that this power to depose is not in the cardinals, because in them there is no power over the conjunction of Peter and the papacy unless in a limited way, namely, if the papacy is vacant. In the universal Church, however, there is power without any limit over that conjunction, if we are speaking without regard to positive law. Therefore, the cardinals cannot

depose a heretic pope; this is a matter for the universal Church. Nevertheless, this power could be committed to the lord cardinals by law through a decree of the pontiff, just as the power to elect was committed to them by way of a decision that they could represent the universal Church – as they do in electing, so also in deposing, when he is to be deposed.

What has been said, again, can be made obvious by an example; for, if a bishop who is going to a distant region appoints his vicar general with fullest authority, laying it down that, if the appointed vicar should die or become a public blasphemer, the canons can remove him and name someone else as vicar without other confirmation etc., it follows that the canons have no authority over the vicar either absolutely or in this case, but [only] over his removal in that case, which is having power over the conjunction of the vicariate with the person in a [particular] case etc. The situation is similar in the case now in hand, for *the shepherd and the bishop of our souls* (1 Pet. 2:25), the Lord Jesus Christ, *went into a far country, to receive for himself a kingdom, and to return* [Luke 19:12], and, before the ascension, He appointed the apostle Peter as His vicar general with fullest authority, saying to him, *Feed My sheep* [John 21:17], putting into effect the fullest power previously promised to him, *I will give to thee the keys* etc. and, *Whatsoever thou shalt bind* etc. [Matt. 16:19]. Moreover, He laid it down that, if ever one of Peter's successors should become a heretic, the Church could remove him and name another in his place, as in c. *Si papa* [D. 40 c. 6].

From the power [thus] granted, therefore, it is obvious that the Church has no unconditional power over the pope; nor, properly speaking, does it have any power over the pope in a case of heresy, but only over the conjunction of the papacy with Peter, which is dissolved by [his] removal. So also it is quite evident that the power of the Church is [power] over making and unmaking the conjunction of the papacy and Peter, the subject being [suitably] disposed by [his] faith and [his] will in regard to its making; in its unmaking, by [his] heresy and [his] will. Accordingly, this power is inferior to the papacy, and, therefore, cannot limit its power. And so it is obvious that the pope has no power superior to him even in a case of heresy, which was intended.

Chapter XXII

Answers to the arguments and texts cited in Chapter XVII to prove that a heretic pope *ipso facto* is deposed by divine law

Although from the conclusions reached the reasonable opinion is evident: namely, that a certain and undoubted pope is not, properly speaking, subject to the council or the universal Church either absolutely nor in a case of heresy, because he still is the pope; but that, in a case of heresy, the connection between the papacy and that particular person is subject to the decision of the Church and the universal council, so that he can be deposed. Nevertheless, it is necessary to deal properly with the arguments and texts [adduced by] so many illustrious men who hold that the pope is deposed *ipso facto* and, therefore, subject to the council.

Since the principal force [of their case] consists in this, that faith, even if unformed, is required of members of Jesus Christ, therefore, you must know that baptism, by which we are first regenerated and belong to Jesus Christ's mystical body, which is the Church, as far as it is relevant to the present subject, has three effects upon our souls. It imprints, first, an indelible mark; second, faith; third, charity. Concerning the third effect, charity, it is evident that, although it makes one a living member of Christ, nevertheless, it is not required for having the power either of jurisdiction or of [holy] orders. The opposite [view] belongs to the heresy of the Poor Men of Lyons.¹⁷⁹

Concerning the second thing with which the whole question is concerned, it is obvious too that [faith] is not required for the power of [holy] orders, for heretics consecrate Christ's true body and make true priests, if they do this following the form and intention of the church; and this is the very basis of the remarkable truth that, although unformed faith makes one a member of Christ in a certain sense, as Saint Thomas said,¹⁸⁰ yet because some latitude is allowed in members of Christ in [that] sense, even without unformed faith, on the basis only of the mark of the sacrament of faith, he is made a member of Christ in a certain sense; for unless he were a member

¹⁷⁹ The Poor Men, or Waldensians, believed that only a priest in a state of grace could administer the sacraments effectively

¹⁸⁰ III q 8 a. 3 ad 2: *Opus* (Parma), vol 4, p 48

of Christ in some sense he could consecrate neither the body of Christ nor [His] ministers, nor [could he] administer the sacrament of confirmation. (These things are valid only when performed, not by just any members of Christ, but by those appointed to the higher grades, namely, the priesthood or the episcopate.)

If we consider the matter on a higher plane, we shall see that the baptismal mark has such force that even formed faith cannot take its place, as is obvious from that fact that an unbaptized priest is reordained; see c. *Si quis presbyter* [x 3.43.1]. That this mark makes one a member of Christ [is obvious] from Innocent [III]'s saying in c. *Veniens* [x 3.43.3], "Not just by the sacrament of faith but by the faith of the sacrament someone becomes, beyond doubt, a member of Christ." It is certain that the proper and inseparable effect of the sacrament of faith (which is baptism, of course) is the mark alone, as is evident when a heretic is baptized according to the Church's form and intention; for he receives nothing other than the mark.

If we raise the mind's eye even higher, we will understand that someone who has only the mark of faith is a believer and an unbeliever at the same time, a member of Christ and the Church, yet outside their membership in other respects; and, therefore, differing and contrary things are said by the doctors. For someone having only the mark of faith, in so far as this is his own doing, is an infidel and outside the fellowship of Christ and of the Church, since he disbelieves of his own free will. However, by the action of Jesus Christ, Who keeps the mark of faith indelible once it has been given, he is a believer against his own will and a member of Christ and the Church willy-nilly, since he is unable to abdicate or reject the mark of the faith once it has been received. That is why, according to Saint Thomas,¹⁸¹ such a person is counted as one of the faithful when it is said that a believer is punished more severely for adultery than an unbeliever, on account of the sacraments of faith with which he is imbued, against which he commits an outrage by sinning; and he is numbered among the infidels when [Saint Thomas] posits heresy as a species of infidelity.¹⁸²

One having only the mark differs from one having even unformed faith as far as the duties of a member of Christ, because one having

¹⁸¹ 1^a 1^a q. 10 a. 3 ad 3: *Opera* (Parma), vol. 3, p. 39.

¹⁸² 1^a 1^a q. 10 a. 5: *Opera* (Parma), vol. 3, pp. 40-1.

faith, as well as the mark, receives an inward infusion from Jesus Christ, the head, in relation to this life-giving act, which, as Saint Thomas says, is to believe.¹⁸³ One who has only the mark, however, does not receive inwardly the infusion of any life-giving act, but only what regards external operation, just as someone can use a withered arm to strike others or move some external object.

Because, therefore, the mark of faith is the first [factor] in making a member of Christ, which is obvious from the fact that it, even when it is unaccompanied [by faith], is inseparable from the person on account of baptism alone, and for this reason the proper effect of baptism, by which one first is made a member¹⁸⁴ of Christ and of the Church, must necessarily be the last [factor] in the separation of a member from Christ and the Church; consequently, as long as the mark remains, he does not cease totally to be a member of Christ. Because the mark never ceases, therefore, he always will be included among the members of Christ, even when he has been totally cut off by damnation in Hell;¹⁸⁵ and in this way he is different from infidels, who simply are damned, and he will suffer more, according to the apostle's decree in Hebrews 10[:26-30].

This argument, moreover, is sufficient in itself beyond so many testimonies that are cited; for, according to true theology, divine and human, that which is ascribed to any cause as its proper effect is understood to be ascribed to it according to what is proper to that cause, as is obvious inductively in regard to natural, moral and ecclesiastical causes. Otherwise, all moral certitude would perish. From the fact, therefore, that what is ascribed to baptism as its proper effect, that it can make [someone] a member of Christ, it must be understood as being ascribed to it according to what is proper to this sacramental cause (namely, baptism), differentiating it from the others. Now this [differentiating factor] is how it is able to imprint the mark of faith. It alone has this [capacity]; it causes this first of all and infallibly, only when those things essentially required for the sacrament concur.

Accordingly, a pope who has become a heretic, although he may have lost even unformed faith, retains, even against his will, the

¹⁸³ III^e q. 8 a. 3 ad 2 *Opera* (Parma), vol. 4, p. 52

¹⁸⁴ Reading *membra* as *membrum*.

¹⁸⁵ Cf. Cajetan, *Comm. ad summam theologiae* ad III q. 8 a. 3 in fine in Aquinas, *Opera* (Rome), vol. 11, p. 130.

sacrament of faith whereby someone first is established in what it is to be a member of Christ. Therefore, the arguments and texts which are based on the fact that faith – at least unformed faith – is required to be a member of Christ, cannot carry the implication that he is not a member of Christ and, therefore, has been deposed *ipso facto* by divine law. What can, however, be very properly inferred is that he, from lack of unformed faith (in so far as that is his own doing), is outside the compass of the members of Christ and, on account of this, must be separated from the members of Christ by deposition from the office of head and, afterwards, must be punished by the Church with other penalties and handed over, finally, to a secular court.

Responding to the arguments one by one, therefore: first of all, the Lord's authority is not to the point, because He is speaking of the judgment of eternal damnation, by which *he that doth not believe is already judged* [John 3:18], and on God's part, because, "The Lord knows who they are," as a gloss drawn from Augustine puts it, both in regard to what is deserved (for [each] has in himself the cause of eternal damnation, as Chrysostom says), and in regard to obvious condemnation without trial at the last judgment, as Gregory explains.¹⁸⁶

As for *Upon this rock* [Matt. 16:18] (namely, faith), the answer is that the sacrament of faith, which remains in a heretic, is not something apart from the faith but rather the first stone of building up faith in anyone; and, therefore, while that one stone remains, ecclesiastical power stands upon that rock of faith [even] on the road to ruin for that particular person.

As for *The just man liveth by faith* [Heb. 10:38], if we accept it as referring to unformed faith, the answer is that "to live" is to be understood as meaning "to exercise vital functions," not merely "to be," as it is understood when we say that, for living creatures, to live is to be.

As for the definition of faith, *Faith is the substance* [Heb. 11:1] and throughout this first [verse], the answer is that faith has the role of the leading support among the virtues belonging to believers; and, therefore, it is called "substance." It is consistent with this that the sacrament of faith itself should be first in that order of generation.

¹⁸⁶ Thomas Aquinas, *Catena aurea* ad Io. 3, l. 6. *Opera* (Parma), vol. 12, p. 297.

As for the authority cited from Saint Thomas,¹⁸⁷ the answer is that his doctrine in that passage has been misunderstood and tells against those who cite it on the point in question. For there only those who never actually have belonged to the Church go by the name "unbelievers," as is obvious from what he says in respect of them: "Christ is head other than potentially, in so far as they are capable of union with the body." For it is obvious that, in respect of baptized heretics, Christ is [their] head only potentially, because He is their head actually according to the sacraments of faith. Therefore, they are not called "unbelievers" in that passage. Also the designation "sinful believers" is applied there to heretics, who retain by the sacrament of faith, whether they wish it or not, that union of faith – at least in number – which the author simply calls "union." This is inferred from his saying that, like withered members, they cannot act on themselves, but [only] on others, by administering the sacraments and by teaching. All of these things Christ does through heretics – not as such but in so far as they share in something of Himself as head.

As for the definition of the Church [De cons. D. 1 c. 8], the answer is that, because a heretic is an unbeliever by his own choice, therefore, he is an unbeliever unconditionally and outside the Church. It is consistent with this that he should be within the Church in a certain sense for the time being, though fit to be expelled; for this is how a heretic remains pope.

All the texts of the Old and New Testaments prohibiting communion with heretics¹⁸⁸ do not prove that he is deposed *ipso facto*, but [only] that he should be deposed so that we do not communicate with him; for that is enough to fulfil a command of this sort. If it were commanded by God that a heretic must be avoided *ipso facto*, the apostle would not have said, *A man that is a heretic, after the first and second admonition, avoid* [Tit. 3:10].

Loss of the keys by heretics is understood [as being incurred] to the extent that they are heretics and in regard to legitimate use [of that power]. Loss of honor and jurisdictional power *ipso facto* is understood [both] by their own choice and by what the law prescribes in regard to those who are subject to human law and are

¹⁸⁷ See above n. 160.

¹⁸⁸ See above in Chapter XX.

heretics in the Church's judgment. This is how we should interpret what is said by Saint Thomas and others speaking in the same way. Such men alone are excommunicated and, consequently, deprived *ipso facto*, at least by suspension of the power of jurisdiction, if it is a hidden crime; and their deprivation must be proclaimed. Now the pope, by virtue of what is laid down by divine and human law, and by what his own heresy demands, must be deprived by human judgment, by which the papacy is joined to this person, as has been said.

Also, Augustine¹⁸⁹ takes away the pastoral office from heretics *ipso facto*, because it is impossible that a heretic, while exercising a heretic's office, should feed Christ's sheep. It is possible, nevertheless, that [a pope] who is a heretic in himself is not a heretic as he feeds Christ's sheep, exercising Peter's office, not a heretic's. But, because this is very dangerous, therefore, he must be removed from the office of feeding Christ's sheep.

Last, what is cited from the [ordinary] gloss on the *Decretum* [C. 24 q. 1 c. 1], that the pope, falling into a condemned heresy, falls into excommunication, is false, for, since every excommunication, which is an ecclesiastical censure (and that is our subject), is based on positive law, which does not have coercive power over the pope in the ecclesiastical forum, whereas excommunication implies coercion in the ecclesiastical forum, we must conclude that the pope cannot incur any censure. The doctors carry this point so far that Saint Thomas¹⁹⁰ says that the pope cannot confer upon anyone the power to excommunicate him. Albertus Magnus and Saint Bonaventure are of the same opinion, as lord Juan de Torquemada reports of them.¹⁹¹ Wherefore we must not allow what is said by those who extend all the laws about heretics to a heretic pope. While he is pope he is subject to deposition alone; once deposed, however, [he is] subject to the law, just like anyone else.

As for the argument, drawn from c. *Audivimus* [C. 24 q. 1 c. 4] and Saint Thomas,¹⁹² that, if the pope becomes a heretic, he is less than any catholic, the answer is that this cannot be understood as referring to greater or lesser merits or charity (for it would be out-

¹⁸⁹ See above nn. 162-3.

¹⁹⁰ *In IV Sent.* D. 19 q. 1 a. 3 qa. 3 ad 3. *Opera* (Parma), vol. 7, pt. 2, p. 828.

¹⁹¹ *Summa de ecclesia*, fols. 244'-245'. B, c. 104.

¹⁹² See above n. 170.

side our present subject), and a prelate is inferior to anyone who is in [a state of] charity not only through unbelief but through mortal sin. Nor can it be understood as referring to inferiority or superiority in regard to jurisdiction that is forfeited *de facto*, since the prelate who falls into heresy is inferior in respect of that in regard to which any catholic is superior [to him] (for these would be corollaries [from the effects of his fall]). Any catholic, however, is not superior in jurisdiction; for, if the pope or my prelate became a heretic, I, one catholic who has no jurisdiction, would not acquire jurisdiction over him or anyone else. It is necessary to interpret sensibly and expound with care these words of Saint Thomas, on which so great an edifice has been raised, saying that the pope is deposed *ipso facto*; a different conclusion is to be drawn.

To elucidate this, you must know, first, that, since superior and inferior are correlative, the consequence is that it is necessary to relate the inferior to the superior proportionally, so that, in so far as the prelate is inferior, any subject catholic would become superior. You must know, second, that, since discourse must be understood according to the subject matter, and that passage is concerned with the correction of prelates by subjects, a comparison obviously is being made between prelate and subject, not simply as individual persons but having regard to the office of prelacy.

This statement can be verified in three ways, first, as it is understood simply of superior and inferior; and the meaning is that a prelate, if he falls into unbelief, becomes inferior simply and absolutely, while any believing subject [becomes] greater simply and absolutely, and (taking the words without any limitation) is greater in the Church of God than the unbelieving [prelate]. It is consistent with this that a prelate, until deposed or declared [to be] so, is greater in a certain respect, namely, in regard to [his] power of jurisdiction, moribund as it already is. Second – and it follows from what already has been said – it can be interpreted as meaning that, even as regards the power of jurisdiction, an unbelieving prelate is inferior and a faithful subject is superior, for an unbeliever, in so far as his unbelief is voluntary, is not one of Christ's members, and, for this reason – as far as it depends on Him – incapable of the power of spiritual jurisdiction. Any believer, disposed by his own spontaneous faith, is capable of having the power of spiritual jurisdiction in Christ's Church; and so, on account of unbelief, a prelate

becomes inferior as regards the power of jurisdiction in so far as it is voluntary; and the catholic subject [becomes] superior. Third – and it follows from the said exposition – it can be interpreted as referring to “superior” and “inferior” in the office of defending the faith, for, from the fact that a prelate deviates from the faith, while the subject is steadfast in the faith, the former becomes inferior in exercising the office of defending the faith, while the believing subject, contrariwise, becomes greater in the office of defending the faith. All of this together satisfies the letter of the *Decretum* and the intention of Saint Thomas; and this agrees with what he says elsewhere.

Finally, for the heretic Pope Peter to be accused and judged proves nothing but that he has a superior judge – not superior to the pope, as they think, but to the conjunction of the papacy and Peter in a case of heresy; and it is conceded that a council is judge in such a case. The answer to the points cited in Chapter XVIII, in so far as they militate against the present conclusion, is obvious from this. Only one point remains to be cleared up – namely, whether heresy alone suffices, or whether incorrigibility or obstinate perseverance in heresy is required for deposing the pope. The following chapter will deal with this.

Chapter XXIII

What is to be done when a pope who has lapsed into heresy is prepared to undergo correction

Finally, to resolve all of this difficulty concerning the council's power to depose the pope in a case of heresy, you must know that there are two extreme positions here. One is that the pope cannot be deposed on account of the crime of heresy, even [if it has been] confessed. This opinion is founded, first, on the case of Marcellinus and the bishops' response, as is obvious from c. *Nunc autem* [D. 21 c. 7]; and Pope Nicholas [I]'s words are there. When the pope incurred the charge of idolatry, the council which was convened, seeing him contrite of heart, said, “Judge yourself. The first see is not to be judged by any one.” And so, not having been deposed, he was martyred subsequently. Second, it is founded on the [ordinary] gloss to the said chapter and on c. *Si papa* [D. 40 c. 6] and many doctors. Third, [it is founded] on reason, because, since “her-

etic" is the name of a vice and a heretic pope should be deposed, he is liable to be deposed as long as he is a heretic or [has] strayed from the faith; and thus, if he repents his crime, he no longer is a heretic or strayed from the faith; and, therefore, he no longer is subject to the penalty of deposition. This argument is founded on what Gratian says in C. 36 q. 2 of the *Decretum* concerning marriage between abductor and abducted, as is obvious there in c. *Nullus* [C. 36 q. 2 c. 6]. Fourth, [it is founded] on the apostle's authority, *A man that is a heretic, after the first and second admonition, avoid* [Tit. 3:10]. If avoidance does not follow heresy [immediately], but only after a second admonition, *a fortiori* deposition does not [either].

The other opinion is that the pope can be deposed on account of the crime of heresy. This is founded on the fact that he is liable and subject to a penalty for whatever crime he admits, even if he does not persevere in it, as is inductively obvious. Whoever commits homicide once is liable to the penalty for homicide; and likewise for adultery, simony, theft, blasphemy, perjury and so forth. But the pope is liable to the penalty of deposition on account of the crime of heresy, as the doctors generally say, influenced by c. *Si papa* [D. 40 c. 6]. Therefore, perseverance in heresy is not required; but, just as, if he had to be deposed for adultery, it would suffice that he had committed adultery, so, because it is said that he must be deposed for deviation from the faith, it suffices that he has been guilty of heresy.

This is confirmed, moreover, because other prelates – bishops, for instance – simply on the ground that they have embraced a condemned heresy, are excommunicated *ipso facto* in the Church's forum and can be declared deprived for the crime committed. Also this is confirmed again: if a pope prepared to be corrected cannot be deposed, then, since he could relapse and rise again a hundred times in the truth, it would follow that, having relapsed a hundred times, yet being prepared to be corrected, he cannot be deposed, which is absurd.

Although these two opinions seem contrary, nevertheless, expounded in the middle way, they are not found to clash. Accordingly the middle and reasonable opinion is that a heretic pope after two admonitions must be deposed, since the apostle Paul, determining this point, [says], *A man that is a heretic, after the first and second admonition, avoid* [Tit. 3:10]. Assigning the reason why he is to be

tolerated no longer, he adds, *Knowing that he that is such an one is subverted* [Tit. 3:11], where the interlinear gloss, at the word *subverted*, explains it as, "lost"; and, at the phrase *such an one*, it explains it as, "incorrigible." The meaning of the text is that, because human judgment is given according to what is found in most cases and according to the common course, whoever declines for the first time from the faith which he professed by his own will to be true, after one correction, a second time, and a third one after a second correction, is judged to deserve expulsion as incorrigible. Therefore, a heretic pope delinquent in faith, after a first and second admonition, must be shunned by deposition. The faithful cannot shun him while he remains pope, since the salvation of all depends on him after the Lord Jesus, as is said in c. *Si papa* [D. 40 c. 6].

Because, therefore, the apostle commanded that a heretical man who [still] offends against the faith after two admonitions should not be tolerated but shunned, the consequence is, first, that, no matter how ready a heretic pope relapsed after two admonitions may be to be corrected, he not only can but ought to be deposed – and rightly, lest human judgment be protracted infinitely; it should rather be brought to an end at some prescribed point. A reasonable limit is defined as a threefold offense with a threefold admonition: the first [admonition] in the profession of faith, two being added after deviation, so that a third offense has treated three admonitions with contempt. In the same way, heretics relapsed after profession, excommunication and adjuration are not admitted any more by the Church.

The second consequence is that a heretic pope should not be deposed before the admonitions: he is not excommunicated on account of heresy but should be excommunicated by being deposed. Therefore, the apostle's command concerning double admonition, which should not be observed in the cases of others, who are inferiors, on account of the addition of excommunication *latae sententiae*, which the Church imposes on heretics, should be observed to the letter in him. Others, because they are excommunicated, are to be avoided steadfastly by the Church thereafter; the pope, however, because he is not excommunicated [automatically], as heretics were not [excommunicated thus] in the apostle Paul's time, but are excommunicated [thus now], must be shunned after two admonitions. The twofold admonition allowed by Paul does not take away

the power under human law of proceeding more rigorously against heretics who are subject to human law, just as divine law, by allowing marriage with a half-sister,¹⁹³ has not taken away the Church's power to prohibit such a marriage; what it shows is that [this rule] must be observed in the absence of any human law. According to this, because the pope, as will be obvious, is to be judged and deposed solely by divine law, because he is subject to it alone, therefore, the apostolic rule remains for him alone, others being excommunicated by the Church on account of heresy.

It is no obstacle to this to say that heretics even in Paul's time were excommunicated by him. Since that sentence is extended to superiors – namely, angels from heaven¹⁹⁴ – and since it is obvious that no one can excommunicate his superior in any circumstances, the consequence is that there was no excommunication, but a declaration that anyone, even an angel from heaven, would be anathematized by God if he preached against the gospel of Christ. This is to proclaim him to have been separated from God and worthy of the Church's excommunication so far as men [are concerned]. This is confirmed by Saint Thomas' saying¹⁹⁵ in that connection that this opinion given by the apostle was promulgated on the authority of gospel doctrine, *The word that I have spoken, the same shall judge him in the last day*, John 12[48]. For it is obvious that the divine word establishes that they have to be excommunicated by the Church, not (for this would be to contradict itself) that they had been excommunicated by it.

The answer to the arguments for the first opinion is, in a word, that a pope who deviates from the faith after a second admonition is not acknowledged as prepared to accept correction by human judgment; but, rather, he is judged an incorrigible heretic, although he always might be corrected in the sight of God and may perhaps in truth be corrected.

The answer to the arguments for the other opinion is that, where there is a special law, it is not necessary to proceed by the common law. In this case, however, there is the apostle's special law; and it is sufficiently consonant with reason and the Church's procedure in

¹⁹³ Literally *sorore consobrina*.

¹⁹⁴ [If] an angel from heaven preach a gospel to you besides that which we have preached to you, let him be anathema [Gal 1:8].

¹⁹⁵ *Expositio ep. ad Gal.*, c. 1, l. 2: *Opera* (Parma), vol. 13, p. 386, citing John 12:48

excommunicating persons, especially a person of such outstanding dignity. A reason for differentiation in regard to other bishops already has been given, namely that their situation is not what it was in the time of the apostles on account of excommunication by the Church, by means of which they at once become persons to be shunned; and, therefore, they can be declared to be deprived. However, having regard to their dignity and to human frailty, to allow a single admonition, if it preceded a declaration [of deposition], would be an equitable act of mercy. What Saint Thomas¹⁹⁶ wrote concerning the reception of heretics by the Church applies to what has been said.

Chapter xxiv

The opinion that a pope proving *incorrigible* in any notorious offense causing scandal to the Church is subject to the power of the council and can be deposed by it

Having dealt with the pope's relationship to the council in a case of heresy, it is necessary to determine in cases other than of heresy if the pope is subject to the council's deposing power in any such case. First, then, cases which truly are sins must be treated. Afterwards we shall speak of cases arising from certain circumstances.

It is, therefore, the opinion of many that the pope can be deposed by a general council apart from a case of heresy,¹⁹⁷ and this is proved under seven headings.

First, by reason of crime: the pope can be deposed for the crime of heresy; therefore, for any other [crime]. The conclusion is proved: first of all, because either this is peculiar to the case of heresy on account of its gravity, and this [is] not [so], because hatred of God is a worse crime than heresy, as is obvious in Saint Thomas;¹⁹⁸ or on account of the harm to the Church, and this [is] not [so], because the pope could harm the Church more by selling all benefices, exalting the wicked, suppressing the good, exercising tyranny, a conspicuous example of vice, of blasphemy, avarice etc.,

¹⁹⁶ tr^a it^m q. 11 aa 3 and 4: *Opera* (Parma), vol. 3, pp. 48-9

¹⁹⁷ See Jean Gerson, *De ecclesiastica potestate*, Consideration 8: OC 6.223-5.

¹⁹⁸ tr^a it^m q. 34 a. 2: *Opera* (Parma), vol. 3, p. 142

than by obstinately thinking that the Holy Spirit does not proceed from the Son, while he lives rightly otherwise and he alone holds this heresy. Second, because it is not found specifically stated in sacred Scripture that the pope can be deposed more for heresy than for any other crime, it remains, therefore, a matter for interpretation by the doctors and canon law. Just as Pope Boniface [I], pope and martyr,¹⁹⁹ expounded the case of heresy in c. *Si papa* [D. 40 c. 6], so a case of crime incorrigible, notorious and scandalizing the Church can be excepted, as the [ordinary] gloss opines there. Third, because one who can [act] on the greater can [act] on the lesser, as in c. *Ex parte* [x 3.30.27]; but the council can judge the pope for the greater crime, namely, heresy; therefore, [it can do so] for the lesser, notorious simony etc.

Second, on account of abuse of power: for it is obvious that a sword can and should be taken from the hand of a madman, and one who attacks and kills bodies [can and should] be seized and, if he persists in his purpose, be placed in custody. How much more can a pope, whose rage leads to the damnation of souls, abusing the sword of papal power, be deprived of it like a madman and a drunk man, who are moved by the turmoil of their passions. He drives others to do evil by his example, as the apostle witnesses, saying to Peter, *How dost thou compel the Gentiles to live as do the Jews?* [Gal. 2:14]. The [ordinary] gloss [says], "by the example of conduct." And this is confirmed: if the pope wished to oppress or kill a woman, he could be repelled, struck and killed according to the standard of blameless response [cf. Cod. 8.4.1]. *A fortiori*, if he oppresses the Church and kills souls, he must first be resisted; and, if it is necessary, he must be "killed" by deposition. This is confirmed by reference to the end of the power he received, because it is for edification not destruction.

Third, on account of the obligation of the pope himself: the pope is bound to clear himself when he is charged with a scandalous crime, as is obvious in the cases of Damasus, who was accused of adultery, as Jerome²⁰⁰ witnesses, and of Sixtus [III],²⁰¹ and of Leo [IV] and of Symmachus in C. 2 q. 7 [c. 41 and p. c. 41 ¶ 10]. It

¹⁹⁹ Actually, the text derived from Boniface, the apostle to the Germans

²⁰⁰ This accusation is recorded not by Jerome but by Anastasius the Librarian, see C. 2 q. 7 p. c. 41 ¶ 9.

²⁰¹ See D. 21 c. 7

also is proved by reason, because he is bound to feed his sheep, and it is obvious that scandal starves the sheep. Failing in his duty to clear himself, he must be judged; therefore, the pope can be judged by the Church for a crime other than heresy. It also is confirmed by the authority of Gregory [VI], who says in c. *Si quis* [C. 2 q. 7 c. 42], "If he wishes to accuse us about this or contends that we act outside our authority, let him come to the apostolic see, so that he may dispute justly with me there before blessed Peter's confession,"²⁰² until, at last, one of us will receive his sentence." Gerson says²⁰³ that Gregory did this not from humility but from duty.

Fourth, on account of the Church: because, just as the pope, the husband, can present a bill of divorcement to the Church, his spouse, by renouncing the papacy, so, conversely, since they should not be judged to have unequal rights in this regard. A more powerful argument is presented for her against her husband, either because he seeks to prostitute her in so far as he can, [treats] her with savage tyranny by rending or [flogging] her, by dissipating her goods, or because he strives to abuse her to the detriment of [her] children. This is confirmed because the correction or deposition of the prince belongs to the whole community, according to Aristotle,²⁰⁴ if he persists in being incorrigible. This power cannot be removed or abdicated by a free community. How much more will the Church have it?

Fifth, on account of divine providence: for, since *The works of God are perfect* [Deut. 32:4], and the Church is His immediate work, much more than the synagogue, to which He said, *What is there that I ought to do more. . . that I have not done it?* [Is. 5:4], it is necessary that the Church's government and body be provided for perfectly. It is obvious that a body which cannot cut off or heal rotten members is not perfect but must sustain [them] with great harm evidently being done to the whole. Similarly, a government which cannot preserve the common and necessary good by cutting off those who notoriously usurp the common good, despoil it etc. is not perfectly disposed. A pope who gives notorious scandal by simony, luxury, blasphemies, tyranny, promotion of the unworthy etc. does all these things manifestly against the common good of

²⁰² The shrine over Peter's tomb in the old Vatican basilica.

²⁰³ *De auctoritate papae ab ecclesia*, Consideration 12 OC, 3, 301-2

²⁰⁴ *Politics*, III, 10. The text has Book V.

the Church Militant, [which is] charity, and against the good of the [Church] Triumphant.

Sixth, on account of the decrees and acts of the Councils of Constance and Basel: for, in the Council of Constance, John XXIII, whom they held to be the true pope, was deposed; and [so was] Benedict XIII, with the consent of his obedience. Also, in the Council of Basel, Eugenius IV was deposed; and Felix [V] was elected. Of old, many pontiffs were deposed, and not for heresy, like Felix [II], Stephen [VI], Christopher, Benedict [IX], Gregory VI, John XII. This opinion is confirmed by the authority of many doctors taking the same view as those councils, as is obvious from the [ordinary] gloss on c. *Si papa* [D. 40 c. 6] and the following chapters.

Seventh, on account of the nature of human judgment, namely, according to what is cited and proved or presumed by a judge, whence it results that, on account of presumption of heresy, a pope who is not a heretic can be deposed in many cases: when he is presumed to be a heretic on account of contumacy, according to c. *Cum contumaciam* [vi 5.7.3]; or by remaining in excommunication for a year for want of clearing himself, according to c. *Excommunicamus* [x 5.7.13]; or when, in fear of death, he acted heretically only in outward appearance, as is said of Marcellinus;²⁰⁵ or when he uttered heretical words unintentionally out of similar fear; or if he is convicted as a relapsed heretic by false witnesses; or when he could not prove his defense in a case concerning the faith.

For these and similar [reasons] it is believed that the pope is subject to the general council's judgment in many incorrigible cases, so that he can be deposed by it.

Chapter xxv

A discussion and resolution of the question: which law is to decide cases in which the pope is subject to the council's judgment

The common view of the doctors, theologians and ancient canonists opposes this opinion, holding that, if he is a catholic, the pope is not judged by any judge on earth according to c. *Si papa* [D. 40 c.

²⁰⁵ Juan de Torquemada, *Summa de ecclesia*, fols 243^r-244^r II, c. 103

6] and c. *Oves* [C. 2 q. 7 c. 13]. Since this issue is much disputed on both sides, it is necessary, first, to see in what this difficulty consists, whence the truth of the question hangs, which being ignored the truth of it is hidden, which being known, it shines forth. Unless this is known, someone may happen to follow the truth but not know that he has followed it.

You must know, therefore, that the whole difficulty hangs on this: whether by divine or human law, in a case of crime, whatever it is, a pope is left to be deposed by the power of the Church or the council. If divine law is required to make this exception, that in cases of the crime of heresy he could be deposed by the Church, a divine law also is required establishing that he could be deposed on account of such a crime, notorious, scandalous and obstinate. If human law alone suffices to establish that a pope must be deposed in a case of heresy, human law alone also is enough to establish that the pope is deposed on account of a notorious crime.

Those who say that divine law is required base themselves on this, that, although Peter is joined to the papacy by the Church's ministerial power, once he is made pope, he is over the Church and the council by divine law; and, for this reason, he can be subject to no inferior law, neither absolutely nor in certain cases, to the council or the Church, but to divine law alone. And because divine law subjects him to the ministerial (or, as others prefer, authoritative) power of the Church only in the case of heresy, therefore, he can be judged and deposed in that case alone.

That a case of heresy is made an exception in divine law is obvious from many cited texts of sacred Scripture expressly commanding separation from any heretic. That this alone is excepted is obvious from the decree of [our] Savior, *The scribes and the Pharisees have sitten on the chair of Moses. All things therefore whatsoever they shall say to you, observe and do; but according to their works do ye not* [Matt. 23:2-3], where the Lord plainly laid it down that subjects ought to heed prelates of bad life and good doctrine. Now it is obvious that doctrine pertains to the faith; life and works, however, to the bad conduct involved in other crimes. According to the Lord's decree, therefore, faithful prelates must be heeded, although they are bad. The same decree also is confirmed by the apostle Peter, *Be subject to your masters. . . not only to the good and gentle, but also to the froward* [1 Pet. 2:18].

Those who say that divine law is not required, but that God left this in the power of human counsel, just like many other things, base themselves on this, that a purely human work in itself morally neither good nor bad is fully subject to human law, now the conjunction between Peter and the papacy is a purely human work in itself sometimes good, sometimes bad; therefore, it is fully subject to human law, and for this reason human law can dispose of this conjunction, so that, when it is good, it endures, when it is bad, it is dissolved.

I said, "a purely human work" to distinguish it from sacramental operations, which are not purely human. In the conjunction of Peter and the papacy human action alone intervenes, joining both in the act of election, imposing form on matter, as is obvious from the fact that, if he ceases to be pope, as Celestine V did, nothing of divine work remains in him, as the power of orders remains in a bishop who resigns or a priest who has been degraded, for, as is said, *For the gifts . . . of God are without repentance* [Rom. 11:29].

I said, "in itself neither good nor bad morally," to distinguish it from acts good in themselves, like believing in and loving God etc., and those bad in themselves, like blaspheming God, lying and the like. These are regulated by natural and divine law. The conjunction of Peter with the papacy, however, is sometimes good, as is obvious in all the holy Roman pontiffs, and sometimes bad, as is obvious in those same guilty ones of whom one would have wished to have remained ignorant.

A confirmation of this is that the ministerial power existing in the Church for the conjunction of Peter and the papacy is regulated by human law, as is obvious from the act of electing a pope, which is rendered void and null by failure to observe human law. Accordingly, just as Boniface, pope and martyr, promulgated that the pope can be judged and deposed in a case of heresy [cf. D. 40 c. 6], it can be promulgated by another human law that he could be deposed for simony involving benefices, and so for other very great excesses, with due observance of the consonance of human law with natural and divine law. Even without a new law, because judgment and equity have their place in a manifest defect of human law, the pope could be deposed for notorious, scandalous and incorrigible excess, just as for heresy.

Anyone who looks more diligently will see that there needs to be a divine law defining cases of deposition of a pope; nor can nor could this be done by any human law, which is proved by reason very briefly and clearly. Every ecclesiastical law can be repealed and changed by the pope; therefore, the pope cannot be proceeded against by any human law against his will. The antecedent follows from the fact that he is the lord of the positive law. The consequent is evident because, in so far as he can repeal a law and does not wish to submit to it, he will repeal it, and so no action can be taken against him. Although this reason suffices, because the pope can do this by divine authority, and his power is not diminished or impeded by any devolution, impediment, imperfection, appeal, suspension or any other limit in those things which are of the positive law, yet the same point is proved by arguments that are proper to ecclesiastical power, leading to the [same] conclusion. For power has four meanings here. First, there is papal power, with which, since "Equal has no power over equal," we need not concern ourselves. Second, the power of the Church or the council over the pope simply and absolutely; and this is nothing but a chimera. Accordingly, it has had no effect in God's Church for 1,500 years. All positive laws are subject and always have been to the pope's power, whether the council wishes or not, as the observance of the universal Church dispersed throughout the world witnesses. Third, the council's authoritative power over the pope in a case of crime, such as heresy; and this power, although it seems to be posited less reasonably, nevertheless, is witnessed by what has been argued, because those positing it only in one case established by divine law say that it could be exercised in act. Fourth, there is the Church's ministerial power, which has as its object the conjunction of a person with the papacy. This is witnessed by what has been said, because, since it does not extend directly over the conjunction of Peter and the papacy already made, but to the one to be made – it can do nothing to the one already joined, Pope Peter, as the superior already named and constituted ministerially by this [power] – the consequence is that it does not belong to it to determine the status of the one already joined, namely, Pope Peter, making dispositions for the dissolution of the conjunction. For such dispositions pertain to the [person] already joined [to the papacy], to which that power

does not extend. Therefore, unless the disposition of Pope Peter toward dissolution [of the conjunction] were determined by divine or natural law, that power cannot be used in the act of dissolving [the conjunction], since it neither has an object properly disposed, nor is it able by itself to dispose [the pope for the act] by determining what is the disposition subjecting the subject, namely, Pope Peter, to such a power.

From this conclusion, that a divine law is required to establish a case of deposition of the pope, it is obvious how ignorantly they all proceed, who proceed from the force of canon law to show that the pope can be deposed for notorious, scandalous and incorrigible crime, as the [ordinary] gloss on c. *Si papa* [D. 40 c. 6] and c. *Achatius* [C. 24 q. 1 c. 1], not knowing what it said, erred with a whole multitude of followers. For it is necessary to find a case of subjection of the pope to the council from divine law, since by divine law he is absolutely over the council and whole community of the Church. Here the hare lies; there is no need to wander here and there any longer. Accordingly, the same gloss just cited tells the truth, saying that the pope cannot ordain that he cannot be judged for heresy. This is true, therefore, because it was established by divine, not human, law in a case of heresy, for the pope is the lord of human law.

The argument cited in opposition does not prove the opposite, for [the proposition] that a [morally] indifferent human work is subject to human law can be understood in two ways. First, in regard to the mode of the action; and in this way it is true. Second, as far as it is done according to its substance; and in this way it is false, as is obvious from cutting wood or iron. Morally, cutting something can be done well or badly; and it can be determined by human law when well and when badly. But it does not depend on human law whether it can or cannot be cut, but on the natural potential of the cutter and the disposition of the subject cut. Accordingly, in what is proposed, the mode of the action, by which the conjunction of Peter and the papacy is made or dissolved, is subject to human law. But, whether that power can be exercised in fact depends on a higher principle, for it cannot be exercised in the act of conjunction unless the see is vacant, and then on a [suitably] disposed subject, a willing Christian. The act of deposition, however, is exercised only on a subject disposed either by withdrawing

from Christianity or by withdrawing his own will, as is obvious in the case of a heretic pope or of one who resigns. According to this, human law cannot decree that the conjunction of the papacy and Peter, when it is bad on account of crimes other than heresy, should be dissolved. It cannot decree efficaciously and coercively, I say, because a criminous pope could repeal that law, since "Equal has no power over equal."

Chapter xxvi

What criminal cases are constituted by divine law, so that the council can depose the pope

Because, therefore, it belongs to divine law alone to determine a case of deposition of the pope, it is necessary to search in that [law] and from that [law] what are the cases of deposition of the pope; and, as will be proved, a case of heresy is the only one in which, according to divine law, the pope can be deposed by the Church – regardless, as far as the proposition is concerned, of whether this is by authoritative or by ministerial power.

This is proved in three ways, by reason from certain theological principles, by the authority of the holy doctors, and by the definitions in sacred Scripture. The reason is this: it is obvious that, apart from the pope, the Church has the power to elect a pope or to apply the papacy to Peter, which, however it is described, has as its objective making or dissolving the conjunction of the person and the papacy, as is obvious from the act of election, by which Peter becomes pope, and the act of deposition, by which Pope Peter, an incorrigible heretic, is deposed. It also is obvious that, in order for Peter to become pope efficaciously, so that he is pope and, consequently, in order for this power of the Church to exercise efficaciously a constructive act of conjunction between Peter and the papacy, some dispositions are required of Peter of absolute necessity, some for this to be done well. The things required of absolute necessity are two, being willing and being a Christian. Never has anyone, however elected, been pope without his consent; and, similarly, he is not pope unless he is a member of Christ. The second disposition is required by divine law; and, because the order of grace presupposes the order of nature, the first disposition is required by the law of nature. The dispositions required for its being done well

are good conduct, ecclesiastical knowledge, charity, experience in ruling and the like. Without these Peter, if he is elected and accepts, is pope, although an inept and bad one.

It is obvious that, because it is easier to destroy than to make, two conditions being required at the same time for the conjunction, if either of them fails, that conjunction can be dissolved. For, if Peter no longer wishes to be pope, that conjunction can be dissolved by resignation; and it is dissolved when the resignation is received, as is obvious concerning the case of Celestine V. Also, if Pope Peter should lapse incorrigibly into heresy, he can be deposed against his will, on the ground that he has ceased, as far as in him lies, to be a member of Christ, just as, in the first case, he ceased to be willing.

All of these points are certain; and from them it follows necessarily that, if the conditions which are not necessary absolutely but are so for its being done well fail in Peter, he is not, therefore, so disposed that the conjunction could be dissolved, so that Peter could be touched by the power to depose. For those dispositions which are not required in a subject so that it is united efficaciously to the form — but [the subject] can be united to the form as much with these [dispositions] as with their contraries and constitute a composite — are not such that their contraries pertain to the dissolution of the compound. That is to say that, if Peter, most guilty, most criminous, scandalous and incorrigible, {but,} nevertheless, a Christian and consenting, becomes and is pope, if he is elected, it is necessary that crimes of this sort, arising when Peter already is pope or persisting, even if they make him a bad pope and not just a bad man, as before, nevertheless, do not render him deposabile. From the fact that goodness belongs to being a good pope, and not to being pope, it follows that badness belongs to being a bad pope, and not to not being pope; and thus, just as goodness is not related to being pope, which is the effect of election, so badness is not related to not being pope, which is the effect of deposition.

The argument is obvious from these points; and it can be formulated briefly thus: only contraries to the conditions required of necessity for being pope render a pope deposabile; but, among crimes, unbelief alone is contrary to the conditions required of necessity to be pope; therefore, unbelief alone among crimes renders the pope deposabile. The first proposition is obvious from the fact that being deposed is not to be pope. and everything continues in

being if a contrary does not intervene. A man would never cease to be unless something contrary to his being intervened, and it is like that in other cases. The second proposition is proved because other things are contrary [only] to the conditions required for being pope well. I wish this argument to be placed in the balance, and not frivolous and superficial [arguments], rambling among inessentials. So much for the first [way].

The texts of the saints are, first of all, that of Anacletus, pope and martyr, and it is found in c. *Electionem* [D. 79 c. 11]: for, if the pope could be deposed on account of crimes, like other bishops, it would have been pointless for him to say that "the Lord reserved to Himself the ejection of supreme pontiffs."

Next that of Boniface [I], pope and martyr, and it is found in c. *Si papa* [D. 40 c. 6], where he says, "Unless the pope is deviant from the faith, no mortal presumes to convict him of his faults," where only the crime of unbelief entails subjection to a judge by whom the pope can be judged, who is recognized to be the universal Church or the general council. He excepts by the same [decree] in which he denies that [the pope] could be convicted.

Also Pope Saint Eusebius, and this is found in c. *Oves* [C. 2 q. 7 c. 13], "The sheep who are entrusted to their shepherd cannot rebuke him unless he strays from the faith, nor accuse him at all."

Saint Anterus, pope and martyr, and this is found in c. *Facta* [C. 9 q. 3 c. 15], says, "The deeds of subjects are judged by us; ours, however, are judged by the Lord." And that he is speaking concerning sinners' deeds is obvious from the fact that he adds, "Those who corrupt the life and conduct of the good are worse than those who steal the substance and estates of others."

Saint Bede, and this is found in c. *Episcopo* [C. 9 q. 3 c. 9], treating of the judgment of sinners, says, "The Roman church alone is able to judge by its authority concerning all things; no one, however, is permitted to judge concerning it."

Saint Bernard,²⁰⁶ writing to Innocent II, says, "Who could do justice to me concerning you? If I had a judge to whom I could bring you, I would have shown you by now – I speak like one in labor – what you deserve. There remains only Christ's tribunal, but far be it from me to appeal against you to it."

²⁰⁶ Ep. 213: PL 182.378. *Mishi summet* in Pollet's edition has been corrected to Migne's *meremini*.

Saint Thomas says,²⁰⁷ "Although prelates are to be corrected by subjects, nevertheless, a penalty is not to be inflicted; but one must have recourse to the superior by denunciation; or, if he does not have a superior, to God, so that He might correct him or remove him." [Elsewhere]²⁰⁸ he had excepted the crime of unbelief, saying, "A prelate would become less if he fell into infidelity; and the faithful subject, greater."

Although these texts should suffice to promulgate the divine law, because all are those of saints, and *The holy men of God spoke, inspired by the Holy Ghost* [2 Pet. 1:21], nevertheless, for the greater firmness of the infirm there is²⁰⁹ Pope Symmachus, saying in c. *Aliorum* [C. 9 q. 3 c. 14], "God wished the cases of other men to be determined by men; but, without question, He reserved the bishop of this see to His own judgment." That he is speaking of the cases of sinners is obvious from what he adds, saying, "He wished the successors of the blessed apostle Peter to owe heaven only innocence and to have a clear conscience before the inquiry of the keenest examiner." Excluding objection, he adds, "Do not imagine that those souls whom God reserved to His judgment apart from others do not dread the inquiry."

Innocent III says in a sermon on the pope's consecration,²¹⁰ "So necessary is faith to me that, while I have God as judge of my other sins, for only one sin, that which is committed against the faith, could I be judged by the Church." Also, Boniface VIII says in the additional constitution *Unam sanctam* [Extra. commun. 1.8.1], "If the supreme power deviates, it is judged by God alone," as was cited above. Albertus Magnus, Pierre de la Palu, Hervéus [Natalis], Ulrich [of Strasbourg], Augustine of Ancona and others, whom the lord Juan de Torquemada mentions in the *Liber de ecclesia*,²¹¹ have taken this view. They must be believed rather than many canonists, whom this subject does not concern, unless they deal secondarily with matters of divine law, such as usury, the Church's sacraments, heresies and the like. So much for the second [way].

²⁰⁷ In IV Sent. D. 19 q. 2 a. 2 q. 3 ad 2: *Opera* (Parma), vol. 7, pt. 2, p. 832.

²⁰⁸ *Ibid.* D. 19 q. 2 a. 2 q. 3 ad 1: *Opera* (Parma), vol. 7, pt. 2, p. 852.

²⁰⁹ Reading *adsumt* as *adest*.

²¹⁰ Sermon in PL 217.656.

²¹¹ See above n. 105.

Divine Scripture excepts the case of heresy alone when, as was cited above, it lays down that heretics must be separated from the Church and that prelates of sound doctrine but bad conduct must be tolerated. This is nothing other than saying: we ordain that a prelate must be deposed for the crime of heresy alone in as much as it depends on divine law, and thus we remit the remaining cases of deposition to human law, in regard to those who are subject to human law. No one has established a rule for those not so subject. Concerning separation of a heretic there are the texts of the apostle Paul and John the Evangelist already mentioned.²¹² Concerning toleration, even obedience to and heeding bad but faithful prelates, there is the Lord's saying, *On the chair of Moses* etc. [Matt. 23:2], and that of Peter the apostle, *Be subject to froward masters* [1 Pet. 2:18], which already has been cited.

Now there is added the Lord's saying at Luke 12[:42, 45-6, 43-4], manifesting in itself that the judgment of the pope who offends against himself and his neighbor must be driven out by the Lord Himself, since He says, replying to Peter, *Who (thinkest thou) is the faithful and wise steward, whom his lord setteth over his family* etc. He adds concerning the same point, *But if that servant shall say in his heart: My lord is long a coming; and shall begin to strike the menservants and maidservants, and to eat and to drink and be drunk: The lord of that servant will come in the day that he hopeth not, and at the hour that he knoweth not, and he shall separate him, and shall appoint him his portion with unbelievers.* It must be noted in this context, first, as far as the text speaks of a servant set over the household, that is the Church, as the interlinear gloss explains, which is obvious from the office, *to give them their measure of wheat in due season*, and from the reward, *Blessed is that servant. . . he will set him over all that he possesseth.* In this appears, as the [ordinary] gloss says, the difference between a subject and the prelate, who does well, because it is promised to the subject that the Lord will gird Himself and, passing, minister to him, but to the prelate that he is to be set over all His goods.

Note, second, that the text manifestly distinguishes three crimes: he offends against himself, his neighbor and God. Everything is

²¹² See above Chapter xi.

included in this. Against himself by gluttony and drunkenness, as is written, *By surfeiting many have perished: but he that is temperate, shall prolong life* [Eccl. 37:34]. Against his neighbor by striking those of either sex committed to his care. Against God by infidelity: it does not represent the steward as offending against God by infidelity, but [only] against himself and his neighbor. It says that such a servant, confident in the Lord's delay, is to be judged by the Lord through death, by which he will be removed from the household, and through eternal damnation with the unbelievers.

These things are manifest in the text; and what we have said is shown clearly: namely, so far as depends on divine law, prelates are ordered to be judged by the Lord for other crimes. For infidelity, however, they are understood to be handed over to the Church's judgment. And thus, if other prelates were not subject to human law, which already ascribed the judgment of other crimes to their subjects, they would not be judged and deposed by the Church except for infidelity, like the pope, who, because he is subject to divine law alone in cases tolerated by divine law, is subject to no one. Because the mere denial of a case established by divine law as far as the pope's being subject to divine law alone suffices for a law to be laid down that he cannot be judged or deposed, much more an expressed tolerance of cases in divine law has laid it down that he must be tolerated; however, others may be tolerated if they are permitted by a subsequent positive law, to which they are subject on the basis of divine law.

Accordingly, the only difference between the pope and other [prelates], in regard to a case of crime to be judged and punished by the Church, is that, in [a case involving] the pope, a text based on the authority of divine law has the greatest possible negative effect, because he is subject to the text of that law alone. In the others, however, neither toleration nor denial of divine law is efficacious, because what a higher law does not ordain or tolerate an inferior law can ordain and punish, as is clearly evident in contracting marriages and the administration of the sacraments, in which many things permitted by divine law are prohibited by the Church to those subject to it.

If the Lord's sentence is perceived without any veil over it, it will appear that this sentence was promulgated in respect of a prelate who has no one superior to him except the Lord, as having

been set over the rest of the household in the Lord's absence; that, accordingly, he who is set over the household in the Lord's absence is represented as fearing no one except the Lord's coming, [and,] confident of His delay, as beginning to sin like one having no one superior to him. For in regard to prelates having a superior power in this life, it is not likewise the case that they trust in the Lord's delay alone, because they still have a superior judge, whose punishment they fear. Also, some weight may be given to the fact that the Lord said these things to Peter, the future pope.

From these texts perspicaciously understood it is established that the pope must not be deposed for manifest crimes other [than heresy]. The Lord, teaching, "Do not wish to act according to the works of bad prelates" [cf. Matt. 23:2-3], doubtless spoke of known works, of which He said, *By their fruits you shall know them* [Matt. 7:16]. However, lest you should think that he is to be deposed on account of the additional reason of scandal, He taught in Matthew 18[:8] that foot, hand or eye – but not the head – which scandalizes is to be amputated, instructing in the text, that, if that is useful to us, should hand, foot or eye give scandal, it should be cut off. He thought otherwise of the organ having the office of head, never saying, "If your head scandalizes you, cut it off and cast it from you." Anyone who believes Jesus Christ, God's strength and wisdom, providing all things and providing for all, will not spurn this authority but will consider reverently that it was not by chance that the Lord referred to hand, foot and eye, very necessary members, and did not mention the head. The reason that cutting off the scandalizing head is not commanded is that the head absolutely must not be cut off, even on account of scandal. I say, "absolutely," however, to distinguish from the case of the head of this or that particular church, because, even if the head of this or that church is cut off, there always remains the Church's head on earth, the pope. It is obvious, therefore, that no notorious and scandalizing crime, apart from unbelief, leads to the pope's deposition. So much for the third [way].

Chapter xxvii

Answers to the arguments presented in Chapter xxiv
to prove that the pope can be deposed by the
Church for a crime other than heresy

After demonstrating sufficiently the truth of the proposition that, if the pope is faithful, he can neither be judged nor deposed by the Church for any other crime, however notorious and scandalous, it remains to answer the points made in opposition.

[In answer] to the first argument in regard to crime, the conclusion must be denied, because there is neither a superior nor an equal relationship between heresy and other crimes. The reason already has been touched on, namely, that unbelief involves not being [pope]; other crimes, being a bad pope. When, therefore, it is said this is either on the ground of gravity or of harm, I say that the division is not sufficient, because there is a third ground, namely, status. Unbelief changes a man's status, because, as far as is humanly possible, it turns a Christian into a non-Christian. Hatred of God, although it is a more serious sin and thus makes a man worse than infidelity does, nevertheless does not make a non-Christian of a Christian.

Nor does it matter that a heretic remains an unwilling Christian by [baptismal] mark, because what is not had voluntarily does not depend on man, in so far as he is a man, as is said at the beginning of Saint Thomas' *Secunda secundae*.²¹¹ For this reason faith, although unformed, and the [baptismal] mark are not two things constituting distinct human ecclesiastical states; rather they constitute completely one and the same state of being a Christian, both concurring, one of them human, faith, which has no existence unless it is voluntary, and the other the mark which is acquired by a man without [any act of] will, as is obvious in children, and which is kept even against his will, as is obvious in heretics. By the removal of faith the state of being a Christian is changed in so far as it was a human [matter], which is for [that state] to be changed by the means whereby it can be changed by a man. Change in the state of being a Christian places a man apart from Christians by its own nature; and, therefore, the crime of heresy requires that the pope

²¹¹ q. 1 a. 2 *Opera* (Parma), vol. 3, p. 2 The translation corrects *P* to *II*.

be deposed not by reason of its greater gravity but of the change of state; other crimes, however, do not.

Although this response is sufficient for the other argument, the one concerning harm, you must know, nevertheless, that it is one thing to speak of harm inherent in sin *per se* and another of harm inherent in it *per accidens*, because it is in this man disposed in this way. If we are speaking of harm *per se*, greater harm is inherent in the pope's heresy than in any other crime, because in heresy, as such, is inherent heretical doctrine, which, in the head as such, might introduce heresy into the universal Church, a greater harm than which cannot be inflicted. If, however, we are speaking of one who does not teach heresy, who governs and administers well, this is *per accidens*; and, therefore, it is to be disregarded.

To the second proof, that it is not stated in sacred Scripture that the pope must be deposed for heresy rather than for any other crime, the response already is obvious: it is not stated that he must be avoided and shunned more for this than for another, but it is stated in sacred Scripture that [this is to be done] for heresy alone, as is obvious from the texts cited. Accordingly, it is not true that this is left to the interpretation of the doctors and canon law, except for the purpose of explanation, as the articles of the faith are left to the doctors and canon law. But, just as the doctors and canon law can explain but cannot change the articles of the faith, so they can explain but not change this divine law by addition or subtraction.

The answer to the third proof is that this maxim, "He who can act in the greater [case] can in the lesser," if it is to be considered philosophically, is found to be false in regard to act, object and effect. The intellect, which has power in a greater act, namely, understanding, has none in a lesser act, like smelling. Similarly, sight, which has power over a greater object, like light, has none over a lesser object, like sound. Man's generative power too is capable of a greater effect, man. Man generates man; and yet he is not capable of a lesser effect, like a lion. If, again, this is to be considered politically, as Innocent III says in other words in c. *Ex parte* [x 3.30.27], it seems that to the one to whom the greater was granted the lesser also was granted, the answer is that this must be understood other things being equal. Now, however, other things are not equal, because in the crime of heresy, which is a greater crime, the subject has changed [his] state of being a Christian; in other, lesser

crimes, however, the subject remains in the same state of being a Christian. This is the true answer in regard to greater and lesser crimes.

In regard to the greater or lesser effect of judgment, however, the minor is denied, because it is a greater thing to judge a pope who is a Christian for adultery than to judge him when he lapses from Christianity for heresy, since a superior state or rank is affected in the first [case] than in the second, as is obvious. The answer to the second argument, regarding act, is that the fallacy consists in this, that it is one thing to take away a sword, resist, impede and the like, and another to do the same things authoritatively. To take a sword from a madman's hand, resist a tyrant, impede an oppressor and the like is permitted to anyone and is obligatory as an act of virtue. But to do these things authoritatively is permitted to a superior alone. Accordingly, although it is permitted to anyone to repel force from himself and his neighbor with force according to the standard of blameless response, nevertheless, it is not permissible to anyone to punish him who resorted to force. Similarly, although anyone licitly could kill a pope who attacked him while defending himself, nevertheless, no one is permitted to punish a pope for homicide with the death penalty. Accordingly, arguments of this sort and the like do not support the judge's authority to punish but rather the duty of any private person to resist, impede and defend, unless someone is so foolish as to say that anyone is judge of anyone else.

You must resist, therefore, to his face a pope who openly is tearing the Church apart, for example, because he refuses to confer ecclesiastical benefices except for money, or in exchange for an office; and possession of such benefices must be denied to those who bought them, with all reverence and obedience; and a case of simony, even committed by the pope, must be denounced. Without a doubt, secular princes and the clergy could properly take the sword from a madman's hand. There also are many ways by which, without rebellion, the secular princes and the prelates of the Church, if they wish to use them, could offer resistance and impediment to abuse of power. But, when the princes and the prelates act only as if they are sleeping, why do they complain that he cannot be deposed? Why do they argue that power was given *unto edification, and not unto destruction* [2 Cor. 13:10]? Let them meet with

fitting remedies the destructive abuse of power by not obeying the wicked, not flattering, not being silent, by accusing, arguing, summoning the princes to rebuke, following Paul's example and his command, *And say to Archippus: Take heed to the ministry which thou hast received in the Lord, that thou fulfil it* etc. [Col. 4:17]. In this way, he would abuse power little, or not at all. You will find the final answer to this argument in the response to the fifth [argument].

The answer to the third argument, in regard to the pope's [clearing himself], is that it too is a fallacy, for clearing himself to remove scandal is one thing; doing the same thing before a judge is another. The pope is obliged to the first by divine law, not to the second. Accordingly Damasus did not clear himself before forty bishops, as is obvious from c. *Nos si incompetenter* [C. 2 q. 7 c. 41]. Gregory I testifies that he submitted himself to judgment from humility, as is obvious from c. *Petrus* [C. 2 q. 7 c. 40], where Gregory himself says, "Peter had received the power of ruling; nevertheless, the same leader of the apostles responded to a complaint made against him by the faithful, [who asked] why he had gone in to the gentiles, not by virtue of his office (by which he could say that sheep should not accuse or rebuke their shepherd); but he responded by the authority of divine power, by which the gentiles received the Holy Spirit." There it appears that [Gregory] imitated the apostle Peter by not using his power, and that he could have used it.

The short answer to the fourth [argument], in regard to the Church as spouse, is: first, that the pope cannot desert the Church against its will, because he cannot renounce the Church's right. He is a prelate for the sake of the Church and not the converse, as Saint Thomas says.²¹⁴ Second, that there is no equality of status on both sides, because the Church is subject to the pope, and not the converse; nor even in the law of Moses could the wife give a bill of divorcement to the husband. Nor is there peril of its being torn apart, because it was written, *The gates of hell shall not prevail against it* [Matt. 16:18].

In regard to the Church as a free community, however, the answer, briefly, is that, although it is free with the liberty of grace, yet it is subject to the pope in regard to jurisdiction. Accordingly, the Church itself did not abdicate of itself power over the prince;

²¹⁴ *Expositio ep. ad Colos.*, c. 4, l. un. *Opera* (Parma), vol. 13, p. 554.

but Jesus Christ, the lord of the Church, did not subject it to the community of the Church itself, but to His vicar; and, therefore, it has no power over its prince. It is not so of other communities of which Aristotle speaks.²¹⁵

The answer to the fifth [argument], in regard to divine providence, immediate in operation and perfect in work, is that God made the Church's body perfectly, disposed and ordained so that it should exist in the best possible order and lack nothing that was fitting. When, therefore, it is said that a remedy against a faithful but criminous pope etc. remains in the Church etc., the point must be conceded; but, when it is inferred: therefore, the Church can depose him as incorrigible, cutting off that member and so on, the answer is that it is a sophism to argue affirmatively from a superior to its inferior, from provision and remedy in general to this [particular] provision or that remedy, as if there were no other provision and no other remedy. What must be pointed out is that Jesus Christ left a remedy of a higher order in the Church for repelling the incorrigible and scandalous rule of His own vicar.

As evidence of this you must know that, just as in the natural order, divine wisdom governs inferior [causes] through middling ones and middling things through secondary supreme causes, so in the supernatural order, among which there is an order of grace, faith and the Church founded on it, it governs inferior [causes] through middling ones and middling ones through secondary supreme supernatural causes. On the contrary, since causes should be proportional to effects, as superior causes correspond to superior effects, and, since, among secondary causes, human providence supported by the Church's authority is a cause of a lesser order than prayer, which is placed by God in the supreme order of secondary causes, which is obvious from the fact that every corporeal and incorporeal creature is subject to it, and since provision concerning a faithful pope is among the supreme effects in the Church, the consequence is that God most wisely provided in the Church a remedy concerning a faithful pope, not human providence, to which He subjected the rest of the Church, but prayer. Nor is the Church's prayer, asking perseveringly for itself things necessary for salvation, a less efficacious secondary cause than human providence,

²¹⁵ E.g., *Politics*, III, 6-8 and 10

since it is obvious that any individual person's persevering pious prayer, asking for things necessary for himself, is a most efficacious and infallible cause, as you have at length in Saint Thomas.²¹⁶

Accordingly, if it is necessary for the Church's well-being that such a pope should be removed, under such conditions, without doubt prayer would remove him. If it is not necessary that he should be removed, why do we dispute with the good Lord, Who denies what we wish and grants what we should prefer? If his removal is necessary, he cannot fail to be removed by the One to Whom prayer is addressed, Who promised that nothing would be lacking to those who fear Him. If it is not necessary for divine judgment and, nevertheless, is believed useful and necessary to human judgment, why do you place yourself above God by wishing to depose him? *Who art thou that judgest another man's servant*, the vicar of Jesus Christ? *To his own lord he standeth or falleth* [Rom. 14:4]. It is not I who say this, but the Lord, Who teaches that God, much more than man, *will . . . revenge his elect who cry to him* [Luke 18:7]. It is plain that the Church includes the elect; and this vengeance, because it is reserved to God Himself alone, is to be done by Him before anyone else. *Behold he shall neither slumber nor sleep, that keepeth Israel* [Ps. 120:4 (121:4)], Who, rising from prayer in the fourth watch of the night, helped the tossing ship [cf. Matt. 15:24], Who freed Hezekiah from Sennacherib's army [cf. 4 Kings (2 Kings) 19:35], Who changed the heart of Ahasuerus [Esth. 8:1], Who struck down Anastasius II at the Church's prayer [cf. D. 19 c. 9], Who subjected Pope Leo (or Liberius according to others), at Hilary's prayer,²¹⁷ Who even promised to add all temporal goods [cf. Matt. 6:33], Who gave us the Son and gave all things with Him [cf. Rom. 8:32].

But, alas, that saying, *But yet the Son of man, when he cometh, shall he find, think you, faith on earth?* [Luke 18:8], has almost been fulfilled, for His promise of such a high and efficacious secondary cause is held as nothing. It is necessary, they say, for the pope to be punished by our providence, not to be left to divine providence alone and prayers. Why do they say this unless because they prefer human providence to the efficacy of prayers? Why do they say this unless because sensual man does not perceive these things which

²¹⁶ Pollet's edition cites *Contra gentes*, III; but see *ibid* IV, cc. 95 and 96: *Opera* (Rome), vol. 15, pp. 291-7.

²¹⁷ Juan de Torquemada, *Summa de ecclesia*, fols. 246^r-248^r. II, c. 106

are of God [cf. 1 Cor. 2:14]? Why do they say this unless because they have taught others to trust in man, and not in the Lord, and make flesh their arm [cf. Jer. 17:5]? How does it come about that, if, in some instance, the pope is deemed incorrigible, subjects, persisting in their own vices, should daily murmur about [his] bad rule, seeking to obtain no remedy through prayer, unless perhaps like sleepers without faith, they fulfil the Scriptures with their behavior – to wit, that a hypocrite rules on account of the people's sins [cf. Job 34:30], a saint in [his] office, a devil in [his] soul, and a king would be given and preserved in the Lord's wrath [cf. Osce (Hosea) 13:11]? The Holy Spirit witnesses in the psalm [65:20], *Blessed be God, who hath not turned away my prayer, nor his mercy from me*, that God's anger and mercy are in the hands of our prayers. The [ordinary] gloss, "Because prayer is not removed, have no fear, because mercy is not taken away."

But we are so stupid that we may not wish to pray as we should and yet may wish for the fruit of prayer, that we might not wish to sow and might wish to reap, so that we might not be named as Christians nor embrace Christ's provision; and yet thus we will overcome a lunatic, a madman, a tyrant, a divider, a waster and a corrupter of the Church, when it might happen that such a one rules. But we who cannot subdue ourselves with our prayers, because we do not offer them as we should, how can we complain that we do not subdue the lives of other wicked men with prayers, which not only do not pass through the roof but do not penetrate the very heads of those who pray? What is worse, God long ago complained, *This people honoureth me with their lips: but their heart is far from me* [Matt. 15:8]. In the time of revealed grace He is not even honored with lips, since nothing is said less intelligibly than the divine office, nothing performed more swiftly than the mass. The time of the divine office and the mass is extremely irksome; they tell jokes and discuss business and quite worldly goods. They enjoy themselves without reckoning of the time.

Accordingly, the conclusion is either that cutting off a believing but incorrigible pope, after human remedies [have been applied], is necessary in truth for the well-being of the Church, [in which case] prayer is offered unceasingly by the Church, and in this way a more certain, far nobler and more efficacious provision is made than if the authority to depose were delegated to human providence, or

else [such action] is not necessary, or prayer is not offered as it should be, and then there are no grounds for complaint that there is no provision for expulsion in matters that are not necessary, since, apart from genuine necessity, not even human providence should use that authority, if it had it, or if we ourselves are unwilling to use that efficacious remedy which we have been granted. Although the Lord's hand is not shortened, so that it could not save in every sort of necessity, nor are His ears deaf, so that He could not hear in necessity [cf. Is. 59:1]; but it is our iniquities that separate us from our God and lead to many bad actions in our midst, as Jerome in c. *Audacter* [C. 8 q. 1 c. 18] and Gregory I [cf. C. 7 q. 1 c. 49] rightly say.

If it is urged against these points that, because prayer is the common remedy for all evils that occur, whereas a specific remedy is required in this matter, just as in other cases, besides a common cause, a specific one must be assigned, the answer is that the supreme causes, although they may be common ones in regard to inferior [effects], nevertheless, are specific in regard to superior effects; and, therefore, prayer, because it is among the supreme secondary supernatural causes, is a common cause in respect of inferior effects. With respect to superior effects, however, such as the removal of a believing pope, being an effect reserved to God, it is the specific cause and specific remedy, besides which there are many other human aids, of which lord Juan de Torquemada wrote.²¹⁸ Bear in mind too, with all of these points, that the worst believing pope tolerated by God cannot infect the whole body of the Church, lead it to destruction and so on, as the argument from the similitudes of bodies and the like assert. For God cannot deny Himself, of Whom it is written, *And God is faithful, who will not suffer you to be tempted above that which you are able: but will make also with temptation issue, that you may be able to bear it* [1 Cor. 10:13].

To the sixth [argument], regarding the acts of the Council of Constance, it already has been said that a council perfect according to the Church's present state could depose a pope whose status was uncertain. No one was certain pope at that time. As for the acts of the Council of Basel, the answer is given by the universal Church,

²¹⁸ See above n. 105.

which revered and reverences as pope Eugenius [IV] (who was deposed by the council), first in his own person and then in his successor, Nicholas V, whom he had made a cardinal in the same year, and so ever since; and this reply from experience shows how wildly they rave who subject the pope to the council.

The answer to the acts of ancient times is that, although many supreme pontiffs are recorded as having been deposed, either they were not undoubted supreme pontiffs or they were deposed *de facto*, not legitimately, as lord Juan de Torquemada shows at length.²¹⁹

The answer to the authority of the [ordinary] gloss and of many canonists following it is that the gloss is contrary to the text, because the text excepts heresy alone; whereas the gloss, moved by a trivial argument, extends [the exception] to every notorious, scandalizing, incorrigible crime, because "contumacy is heresy" [cf. vi 5.7.3]. Now it is obvious that contumacy is called heresy in its widest sense, as simony is too; but it is not equivalent to true heresy, which changes [one's] state of being a Christian. Although the gloss, because it speaks moderately, saying, "I believe" etc., deserves to be excused, nevertheless, I cannot excuse those who cite this document as a foundation for their position, since they are moved by such trivial considerations to oppose the ancient doctrine of the faith.

The authority of the canonists in this matter, because it is principally theological, is slight; nor is it greater on account of the argument on which they base their position. It is not so with the authority of the saints, who are believed to have spoken, inspired by the *Holy Ghost* [2 Pet. 1:21]. On the contrary, according to the canonists themselves, in a matter of faith one must rely more on the authority of the ancients than of the moderns, although, in matters of the law, the younger [the authority] the more perspicacious [it is]. Since, therefore, this is a matter of faith, because it is God's immediate work, not knowable by natural reason but by divine revelation alone, that is in question, it follows that the authority of the saints joined to sacred Scripture must be preferred to all the councils, to the theologians in the universities and to the later canonists, especially the modern ones.

²¹⁹ See above n. 105.

The answer to the seventh [argument], regarding human judgment, is that the conditions of human judgment are of two kinds, some determined by natural or divine law, some by positive law. This is the difference between these, that those which derive from positive law cannot be applied to a pope against his will, because he is not subject to positive law; whereas those which derive from natural or divine law apply even to a pope. The form of the human judgment of a heretic was established by divine law so that he is to be avoided after the first and second admonition; and thus, as has been said, it can happen that a pope believing now but having twice relapsed could and should be deposed. It is by the law of nature that a man can see those things which are external [cf. 1 Kings (1 Sam.) 16:7]; and someone is judged a heretic on account of manifestly heretical acts and words manifestly known to be entirely heretical etc., [that is] those deeds and words which, in human judgment, were done and said with internal consent. On this basis it is a matter of divine law that every word should be established from the mouths of two or three [witnesses], as is obvious from Matthew 18[:16]. By the law of nature someone is believed against himself if he is of a sound mind etc. Accordingly, anyone convicted of a condemned and known etc. heresy by the testimony of witnesses will be judged a heretic; and, similarly, if, by his own will, he confesses himself a heretic, although he may lie before God, he will be judged a heretic. By positive law, if he is contumacious and persists for a year, he and anyone else of this sort is presumed to be a heretic.

Accordingly, the first two cases have no application to the pope, who cannot be excommunicated nor subjected to positive law; but the law handed down by the apostle Paul in sacred Scripture must be observed. Similarly, if he embraced heretical words or deeds without interior consent from certain or probable fear of death, according to human judgment, the pope is not deposed. Accordingly, the apostle Peter, who denied Christ in words alone, because his faith did not fail but [his] charity did, Jesus Christ testifying, *I have prayed for you that your faith may not fail* [Luke 22:32], converted from the sin of denial with perjury, by which he lost charity, was ordered to confirm his brothers, not to be deposed. Following this example, the fathers judged that Marcellinus, who seemed to have sinned by exterior act alone, should not be deposed; c. *Nunc autem* [D. 21 c. 7].

From the cases in which, on account of the conditions of human judgment determined by divine or natural law, a pope faithful in his heart but unfaithful before the Church is deposed, no other case is established than that of infidelity. For it is of no consequence that things should be and appear sufficiently according to human judgment before the Church, which sees only those things which are external; nor does God, Who made man's nature and divine law, require a truer judgment from the Church. Accordingly, no other subjection of the pope to the council is established by these cases, but only that which has been stated, that is, in a case of heresy properly understood. And so, if he is a catholic, no one judges the pope.

Chapter xxviii

Whether there is any situation in which the pope,
without any fault of his own, is subject to the
Church so that he can be deposed

To fulfil what has been promised, it remains to discuss whether in any situation the pope is under the Church or the universal council without any fault of his own, so that he can be deposed. I find, indeed, six known cases in which the Church without any fault of the pope but not without cause can depose the pope.²²⁸ The first is: when it is proved before the Church by witnesses that the pope, who had been detained for a long time by the Saracens, has died at last and the council decides on the election of a new pope; and it is done by decreeing that, for the good of the Church, even if [the previous pope] were still alive, the person newly elected should be pope. It can depose the captive who has no means of return. The second is: when, on account of bodily indisposition, such as dementia, he might be useless and a council assembled by him while he still was of sound mind decreed that another pope must be appointed. The third is: when all the cardinals died at once after the canonical election of Peter as pope, so that they could not proclaim the election. Then the Church, since it would not be bound to accept him, will elect another and so depose this man, because two cannot be [pope] at the same time. The fourth is: when the

²²⁸ Jean Gerson, *De potestate ecclesiastica*, Consideration 8 OC 6 223-5.

cardinals, even though living, cannot instill trust in their canonical election of one [pope], as seems to have happened in the Great Schism from Urban VI to Martin V. Then the Church deposes those who do not wish to resign, as was done in the Council of Constance. The fifth is: when, on account of the common error or impression of the subjects or their general malice, it is presumed that they never will offer obedience to the one rightly elected, yet they are ready to obey another to be elected anew, as if, perhaps, the Greeks wished to return to the Church's unity once the existing pope were removed and a new one rightly appointed. This is confirmed by the authority of the jurists, who say that a professed religious could take a wife for the salvation or conversion to the faith of a great nation. The sixth is: when a true pope had bound himself by an oath or vow to resign but deferred it to the scandal of peoples, who think from such an act of the pope that neither are they bound by their own vows and oaths, as seems to have happened with John XXIII at the beginning of the Council of Constance.

But by examining the cases one by one, it will appear as the unshaken conclusion that in no event can a council depose the pope, although it may be inferred from this that, as was said above, the cases apply in matters which are subject to the determination of human law, but not in those things which derive from divine law alone, such as the authority conferred immediately by Christ, which is necessary for a believing pontiff's deposition.

And so, in the first case, concerning a captive pope, two things are touched upon. The first, in reverse order, that, with no hope existing of return and no access available, he can be deposed by a council. This does not fit with the acts of the primitive Church, because Peter served in prison without any human hope of release and access to him, since, when he was *bound with chains* among so many soldiers, in such strict custody, deposition was not considered, but *prayer was made without ceasing by the church unto God for him* [Acts. 12:5-6]; and so he was liberated by the Church's prayer.

Second, advised by witnesses of [his] death, although it might not be the case, another can be elected. This is not true otherwise than when, advised by witnesses that Martha's husband is dead, Martha herself marries another licitly and bears children, and, nevertheless, when the first husband, who was not in fact dead, returns, it is necessary for her to return to the first husband, who

alone is truly [her] husband; otherwise she would be an adulteress. For so it would be in this case: his spouse will be restored to the pope, who is still alive, even if he did not come back, since he is present everywhere; and the one elected by human error would cease to be pope.

In the second case, regarding permanent dementia, the answer is that the pope cannot be deposed; but it is known that, in regard to permanent dementia, since he would be dead to rational life, according to which a man is a subject [able to receive] the papacy, the cardinals can proceed to elect another without a general council, as if the see truly were vacant, no less than when the see is vacant by resignation.

In the third case, concerning the death of all the cardinals, the answer is that, since the Church only sees what is external, if the pope's election is not sufficiently well known to the Church, then no one is the Church's undoubted pope; and, therefore, the Church does not depose the pope in its forum, although it may depose him in the forum of conscience. That the Church not only could but should do this, is obvious from the fact that he could deceive it by saying that he was elected but, nevertheless, had not been. Accordingly, that case and the fourth, concerning a defect of proof, imply nothing except that an uncertain pope can be deposed, which is conceded freely. But the question is not concerning this, but concerning an undoubted pope. With the Church, not being and not appearing are alike.

In the fifth case, that of a common rebellion, the answer is that evil is not to be done so that good may result, nor must one obviate perils for men by usurping divine authority; nor should the wicked gain a benefit from iniquity to the injury to the innocent. The pope cannot be deposed. If the good do what is in them and resort to prayer without ceasing, casting every care on Him in Whose care the Church is, it is impossible that divine aid would be lacking. It is written, *Fear the Lord, all ye his saints: for there is no want to them that fear him* [Ps. 33:9 (34:9)].

In the sixth case, that of delayed resignation after a vow and an oath, the short answer is that, although he is bound by a vow and an oath to resign, nevertheless, the Church cannot compel him if he is unwilling, because it does not have coercive power over a faithful pope. Be very wary here! The argument – the pope is bound

to this, therefore, he can be compelled to it by the Church – is invalid. For it is obvious that he is bound to keep watch solicitously, not to fornicate and numerous other things; nevertheless, he cannot be compelled by the Church, as is obvious in c. *Si papa* [D. 40 c. 6]. Foreseeing the scandal given them by his perjury, the vow he made and others of this sort, the Lord said, *The scribes and the Pharisees have sitten on the chair of Moses. All things therefore whatsoever they shall say to you, observe and do; but according to their works do ye not* [Matt. 23:2–3].

And so it is obvious that the pope was endowed with such ordinary power by Jesus Christ, when he was instituted as His vicar, that the apostles, the churches, their individual members and the community are subject to him. He, however, lives subject to Jesus Christ alone, so that in no event or case except heresy properly understood can he be judged or deposed except by the Lord Jesus Christ.

For His faith, Church and apostolic see, by His favor, I wrote this work in Rome on October 12, 1511 in the forty-third year of my age. I ask all the readers that, intent on the truth alone, they put away passions, sects, paternal traditions, cases, voluntary glosses and every cloud upon the mind's clear vision, and so show themselves right judges, to the praise and honor of God, the glorious virgin Mary and the apostles Peter and Paul. Amen.

JACQUES ALMAIN

A book concerning the authority of the Church

To the most reverend father in Christ Lord Tristan de Salazar, archbishop of Sens, Jacques Almain, humble Parisian doctor, greetings.

What I especially wished for, most reverend father in Christ, my lord archbishop of Sens, has fallen to my lot: the assignment, namely, of publishing something against the obsequious doctrines – seeking, indeed, by excessive flattery to place the supreme pontiff under an obligation [to their author] – of Brother Tommaso de Vio of Gaeta. [He is], in other respects, a man of learning – if only he had not marred his learning with the stain of flattery and striven to defame and revile with his insolent words the most holy Councils of Constance and Basel. I have undertaken to answer his arguments in some way proportionate to my small measure, so that I might roll a jar like Diogenes or a stone like Sisyphus, and thus avoid appearing to be the only slacker when so many are eagerly at work, or to be wasting away in sloth or idle ease and growing old in the obscurity of private life, while others have their attention concentrated on the matter [in hand. I have undertaken,] without toadying to anyone, without scurrilous abuse, to undermine his arguments – indeed to refute them as far as I can – and to attack his stronghold with (as the saying goes) Gallic arms. But, because these small writings of mine are unlikely to gain much acceptance through my authorship, it is worthwhile for them to display some distinguished and honorable name, so that, relying on such patronage, now that

they are about to see the light and come into men's hands, they may fearlessly undergo the uncertain hazard of judgment. For I know very well that the argument of my little book is such that, without the protection of some powerful patronage, I shall have difficulty in defending it from misrepresentation.

But when I considered to whom I should offer and dedicate these little first fruits of sleepless nights, you seemed to me to be most worthy of all, my lord Tristan, most deservedly archbishop of Sens, both because you are an outstanding and well-loved supporter of men of letters, and also because, as time goes by, it seems to me that I have always occupied a place in your affection – a place not to be disdained – and that I do so even now, so that I hope that as often as I implore your aid, neither in word nor in deed will it ever fail me. So let this little book go forth fortified by your protection and by its own strength, into men's hands; and, if I know that it finds favor with you alone, I have achieved my wish, and intend hereafter in no way to stop the power of my small ability from dealing with and writing about such matters.

Chapter 1

In which the origin of civil jurisdiction is treated, so that ecclesiastical jurisdiction may be made known through comparison with it, and so the Church's authority over the pope may be demonstrated from natural law

God, the author of nature, created man with a natural right or power to obtain those things which are necessary for his sustenance and to repel those which are harmful, on which right is founded the power to kill anyone who attacks [one] unjustly, if the standard of blameless response [cf. Cod. 8.4.1] is observed, although Augustine of Ancona,¹ whose arguments I pass over now, since this is not the subject of our present investigation, asserted the opposite. In the same way, any community of people living together in civil association – which, according to Paul's saying, is like *one body*, and are *every one members one of another* [Rom. 12:5] – has a natural

¹ Augustinus Triumphus, *Summa de ecclesiastica potestate* (Augsburg, 1473) [unpaginated] at Q. vi ad viii.

power to preserve itself not only in being but in peaceful being, which includes the prerogative of cutting off even by death those whose life disturbs the community. This can be deduced from Saint Thomas,² "Every part is ordained to the whole body, whose part it is, as imperfect to perfect; and, if cutting off a certain member is expedient for the health of the whole body, perhaps because it is putrid or infectious to the others," the authority to cut it off resides in the whole body. Since, therefore, "any individual person is related to the whole community as a part is to the whole, therefore, if anyone in the community is pernicious, it is praiseworthy for him to be killed by the community." The same thing is shown thus: the community confers on the prince the authority to kill those whose life leads to harm to the commonwealth; therefore, that authority is in the community first of all, since no one gives another what he does not have. The antecedent is known, since the prince does not have that authority from himself; nor does he have it immediately from God, at least in most cases. As the doctors, especially Durandus,³ say, we are not to understand that a secular king's authority comes from God in the sense that He ordinarily has committed it directly to anyone, but that it is committed to someone according to the right reason which God conferred on men. And it does not appear – since it has not been committed directly by God – that it has been granted to the prince by anyone but the community itself. Therefore, what was assumed is true. Some corollaries follow from what has been said.

First corollary:⁴ The primacy power of coercive jurisdiction, even to the point of inflicting death, is not, in regard to its establishment, purely positive, although its imparting to a certain person, such as a king, or certain members of the community, many or few, who rule it aristocratically or timocratically, [belongs to] positive [law]. That is demonstrably true, because no case can be excepted by positive law, at least by human law, from the command, *Thou shalt not kill* [Exod. 20:13], since it is part of natural law; for there is no

² This is a loose quotation from *II^a II^{ae} q. 64 a. 2 Opera* (Parma), vol. 3, p. 239.

³ Durandus de S. Porciano, *Circa originem potestatum et iurisdictionum quibus populus regitur*, in A. J. Vanderagt, *Laurens Pignon, O.P.: Confessor of Philip the Good* (Venlo, 1985), p. 64.

⁴ The heading, "The right to the sword has been granted to the commonwealth by natural law," added by Richer, is reprinted here by Du Pin.

human power over natural right. So the primary power to kill is natural, not a matter of human ordinance.

Second corollary:⁵ No perfect community can abdicate this power, just as no individual man can abdicate the power which he has of preserving himself; nor, indeed, can he be deprived of it except by God. The gloss seems to be of this opinion at c. *Ostendit* [C. 23 q. 3 c. 11], where we read, "The people truly has jurisdiction, although the law may say that it has transferred its right to the emperor. For, if the city or the people did not have jurisdiction, why would it be punished on account of deficiency in the judge, as in c. *Dominus* [C. 23 q. 2 c. 2], where we read, "The city which has neglected to punish the misdeeds of its citizens or to return what was carried off unjustly must be pursued"."⁶

Third corollary: The whole community has power over a prince constituted by it, by means of which, if the king⁷ rules not to the edification but to the destruction of the polity, it can depose him, otherwise it would not have sufficient power to preserve itself. It was by using this power that the community of the French once deposed its king, not so much for crimes as because he was useless for such great authority, as the gloss has at c. *Alius* [C. 15 q. 6 c. 3], where we read that Zachary deposed the king of the Franks. The gloss has, "That is, he consented to those who deposed him." Using the same power, the children of Israel withdrew from Roboam, who was Solomon's natural successor, electing Jeroboam as their king [cf. 3 Kings (1 Kings) 12:16, 20]. And, although some have received civil jurisdiction over a certain people immediately from God, as seems probable in regard to Saul and David, nonetheless, they always were subject to the whole community in a case where they ruled to the destruction of the community.

Fourth corollary:⁸ A particular polity is not called royal, therefore, because one person rules over it who is greater than the whole community in jurisdiction, and not subject to it in any way, but

⁵ The heading, "Although, with the people's consent, every right and power may have been transferred to the king, nevertheless, the commonwealth always retains the power in potential," added by Richer, is reprinted here by Du Pin.

⁶ Richer adds *bello*, "with war," which appears in neither the 1512 edition nor Gratian's *Decretum*.

⁷ Richer omits *rex*.

⁸ The heading, "What kind of polity is called 'royal,' and why," added by Richer, is reprinted here by Du Pin.

only for this reason, that there is a single ruler who has jurisdiction over every other member of the community and is superior to [each member]. This is not by any means the case in a polity, timocracy or aristocracy. Nor would it be appropriate for anyone to be set over a community so as to be superior to it as a whole in every case, unless such a person were unswerving, as Christ is believed to be, Who could rule a community according to His will and not according to the law, and then that polity would be royal in perfection.

Fifth corollary: The opinion of Scotus⁹ that it would not be permissible for anyone to kill by public authority unless in cases excepted by God from the command, *Thou shalt not kill* [Exod. 20:13], is false. If the reference is to an exemption made by divine positive law, such as the Old Testament's judicial commands (as he seems to claim), it would not have been permissible in the time of the law of nature for anyone to kill, since there was not yet a divine positive law; nor would it have been permissible for any of the gentiles to kill anyone in the time of the Mosaic law, since that law had not been given to them. Similarly, under the gospel law it would not have been permissible for princes to condemn anyone to death, at least in cases other than homicide, since the Old Law has been revoked and the gospel excepts no case, unless you were to say that homicide was excepted by *All that take the sword shall perish by the sword* [Matt. 26:52]. If, however, the reference is to those exempted by God through natural law, I find no difficulty; but then [Scotus'] proof, to establish that it is not permitted to kill for simple theft, is null.

From all of these points it is easy to see how the power a king uses is the community's power. Hence he is said to act by public authority; and, on account of this, William of Paris says¹⁰ that the dominion of princes is ministerial. Consequently, it is easy to see that royal sovereignty, aristocratic sovereignty and timocratic [sovereignty] do not differ among themselves because they are diverse powers, since they have completely the same object, but on account of the diversity of those holding power. But, because I do not intend to say anything primarily regarding this civil power in this treatise, therefore, what has been said is sufficient.

⁹ *In IV Sent.* D. 15 q. 3. *Opera* (Paris), vol. 18, p. 375

¹⁰ Guillelmus Alvernus, *De universo*, pt. 2, c. 58: *Opera omnia* (Paris, 1674; Frankfurt, 1963), p. 901

Chapter II

In which it is shown that ecclesiastical power is neither natural nor capable of being established by men

Since the gathering of believers in Christ is not just a political body ordained to a natural end (that is, living according to virtue) but Christ's mystical body, ordained to a supernatural end, eternal life, for attaining which a lawgiver, having been raised up from our midst, according to Moses' prophecy, namely, Christ [cf. Deut. 18: 15], gave the law of grace and liberty. For that reason He instituted power not to kill bodies, such as civil power is (because He does not *will that a sinner should die* but rather *that he should be converted from his ways and live* [Ezek. 18:23]; nor did He come to lose even one, but rather to give life to individuals [cf. John 6:39-40]) but to compel the faithful to keep the gospel law for fear of another punishment, a spiritual one. Two things make up the totality of this power. The first is the ability to declare the law authoritatively whether by defining or by ordaining something that contributes greatly to achieving the end. The second is the ability to punish anyone who does not keep that law with some punishment. This power, however, is not natural but positive, not simply from man or capable of being instituted by men, but from God alone.

As proof of this one must postulate, as Hervaeus¹¹ shows very clearly, that to establish power is one thing while to confer what has been instituted on a particular person [is another]. This is manifest from the previous chapter, since the people does not institute the power to kill, because it is natural, but communicates it to the prince. Indeed, the power to establish is to ordain that there is in the community a certain power, of such and such a degree and kind, applying to such and such cases, such and such people, and so on in similar respects; and such an institution can precede in time [its] communication to a particular person. Such a power, however, can be conferred on another in two ways: on the one hand, so that it is conferred on a specified person, as when the king appoints Pierre or Guillaume bailiff of a certain city; on the other hand, not on a

¹¹ Hervaeus Natalis, *De potestate papae*, printed in *In quatuor libros sententiarum commentaria* (Paris, 1647; Farnborough, 1966), p. 364.

specified person but on a person of a specified condition, as if the king were to establish some power of jurisdiction in a particular city, ordaining that whoever was elected by such and such persons should obtain it, and such an election is the final condition in regard to the recipient, which makes him capable of such a power by the prince's prior establishment.

With these postulates, it is proved that this power can be established by God alone. This power cannot be established except by the pope, or by the Christian community, or by God. But, first, that it could not be established by the Christian community, at least by its own authority, is proved thus: such a power includes something beyond human power: for example, the ability to remit part of the punishment due in God's tribunal, to render someone incapable, as relates to God, of the Church's prayers, and many other things. Therefore, it cannot be established by the Christian community. That it cannot be established by the pope is manifestly obvious from this: because the existence of this power is prior, at least in its nature, to anyone's being pope.

It follows as a corollary that this power can be taken away neither simply by a man nor by men.

Second, it follows as a corollary that ecclesiastical power, of which we are speaking now, is a coercive power established immediately by Christ, which is capable of being exercised over another person, even against his will, to direct subjects to the end of eternal blessedness, as to the immediate end at which they chiefly aim.¹²

Consequently, a manifold difference can be deduced from what has been said between the ecclesiastical power of jurisdiction in the external forum and lay power. First, in respect of their establishment, since one is natural in its establishment, the other, supernatural. Second, in respect of their ends: one is for a natural end; the other, for a supernatural [end]. Third, in respect of the penalties which can be inflicted by these powers, because a corporal punishment only can be imposed by the one, by the other, simply a spiritual [punishment]. Fourth, in respect of those wielding the power, because an infidel is capable of the one, whereas no one is capable of the other unless he has been regenerated by holy baptism. Again, one, the temporal, can be exercised over infidels; the other, only

¹² Richer adds a heading, "A distinction of lay and ecclesiastical power," here

over the faithful, as will be made clear below. I intend to say nothing more in this treatise concerning ecclesiastical powers other than that which is coercive, since John of Paris and, following him, Pierre d'Ailly expound [them] excellently.¹³

Third corollary: That Marsilius of Padua deviated from the faith by taking away all coercive jurisdiction from the Church, as is seen in his treatise in several parts entitled *Defensor pacis*.¹⁴

Fourth corollary: Ecclesiastical power, considered in itself, cannot be limited in any way by men. If it cannot be established, it cannot be taken away by them; nor can it be laid down by them that it cannot be exercised over certain acts over which it previously could. Jean Gerson deals effectively with this corollary,¹⁵ and, because these things are beyond doubt, I have decided not to buttress [them] with a number of texts or arguments.

Chapter III

Concerning the plenitude of ecclesiastical power and to what matters it chiefly extends

There is such controversy among the doctors concerning the plenitude of this power and to what it extends that there are few points of certainty in this matter, so that in these times, as William of Ockham says,¹⁶ it might be especially necessary that those things which belong to the plenitude of ecclesiastical power should be expounded by wise men, bound by oaths and dreadful threats to tell the truth.

Some enlarge it so far, perhaps by way of flattery, so that they might obtain benefices and privileges, that the power of princes seems entirely absorbed [in it]; and, indeed, [the power would] extend to acts destructive of the Church. Some extend it even to the dissolution of a marriage ratified and not consummated, as does

¹³ Johannes Parisiensis, *Über königliche und päpstliche Gewalt (De regia potestate et papali)*, ed F. Bleienstein (Stuttgart, 1969); Petrus de Alhaco, *Tractatus de ecclesiae, concilio generali, Romani pontificis et cardinalium auctoritate*, in Du Pin, vol. 2, cols. 925-60.

¹⁴ Cf. *Defensor pacis*, ed R. Scholz (Hanover, 1932). Both the 1512 edition and Du Pin use the title *Defensorium pacis*.

¹⁵ *De ecclesiastica potestate*, Consideration 7: OC 6 222-23.

¹⁶ *Dialogus*, pt. 1, lib. 7, c. 67: *Opera plurima* (I. yons, 1494-6, Farnborough, 1962), vol. 1, fol. CLX^b.

the gloss of Johannes Andreae on c. *Quod votum*¹⁷ and the gloss on c. *Ex publico*,¹⁸ because it posits this proposition, that the supreme pontiff could ordain that an unconsummated first marriage could be broken by a second, just as it is broken by entry into religious life; the reader easily can perceive what perils this contains. Panormitanus¹⁹ is of the same opinion [commenting] on the same chapter; and Master Tommaso de Vio has erred along with them in his splendid minor works on various subjects of great interest.²⁰ This is contrary to Christ's saying, *What, therefore, God hath joined together, let no man put asunder. . . except it be for fornication* [Matt. 19:6, 9], where He denied man the power to dissolve matrimony. Second, if it could be dissolved without entrance into religious life, it is unlikely that the point would not be established from holy Scripture, as in the case of marriage between infidels one of whom has been converted to the faith.²¹ Third, the supreme pontiff cannot absolve a debtor against his creditor's will (for, if the opposite were said, many [debtors]²² would run to him for absolution), therefore, he cannot absolve a woman from that to which she is obligated to her husband. Scotus²³ too holds this opinion to be certain, as does Pierre de la Palu.²⁴

However, the argument for the other opinion is stated, so that the truth may be made clearer. A marriage ratified but not consummated is dissolved by a solemn vow [made on entering] the religious life. But the solemnity of the vow is based not on divine but on human law, as is obvious from the aforesaid c. *Quod votum* [vi 3.15.un.], where it is stated that the solemnity of the vow derives only from an ordinance of the Church; therefore, marriage is dissolved by a human statute.

Second, if a solemn vow dissolved an unconsummated marriage by a divine statute, *a fortiori* it would nullify by divine law what follows from the marriage; it is a lesser thing to nullify than to

¹⁷ *Glossa ordinaria* ad vi 3 15 un.

¹⁸ *Glossa ordinaria* ad x 3 32 7.

¹⁹ Nicolaus de Tudeschis, *Abbas Panormitanus in quinque decretalium epistolarum libros commentaria seu lectiones* (Lyons, 1578), vol. 4, fol. 172^v x 3 32-7.

²⁰ *De matrimonio*, in *Opuscula omnia* (Lyons, 1581), vol. 1, pp. 122-4.

²¹ This is the Pauline privilege; see 1 Cor. 7.12-15.

²² The 1512 edition, followed by Richer and Du Pin, says *creditores*.

²³ In IV Sent. D. 31 q. un. *Opera* (Paris), vol. 19, p. 306.

²⁴ In IV Sent. D. 27 q. 3. *Scriptum in quartum sententiarum* (Venice, 1493), fol. 149^b.

dissolve a contract, for the Church can do the first and not the second. But the falsity of the consequent is shown, because, if it nullifies by divine law, neither the supreme pontiff nor the whole Church could dispense someone who has vowed solemnly in any case, since they cannot [act] against divine law.

Third, a marriage contracted and ratified alone signifies the union of Christ and the faithful soul, which can be dissolved; therefore, that marriage too can be dissolved. If it is said that it also signifies the indissoluble conjunction of Christ and the Church, as the Master of the Sentences says²⁵ (and Richard of Middleton²⁶ following him), it follows – to the contrary – that bigamy is contracted if, the first wife having died before consummation, [a man] contracts with a second, or, conversely, if someone took to wife a woman whose husband had died before consummation. This, however, is contrary to c. *Debitum* [x 1.21.5]. Yet the conclusion is proved, because the reason for bigamy is a defect in the sacrament, because there is not only one [husband] of one [wife], as Christ, being one, is joined only to the Church.

The answer to the first of these points is that it is absolutely true that the way in which the vow is solemnized derives from the Church's statute and decision; nevertheless, it does not follow that the effect following from the solemn vow, through which the one who vows experiences civil death, derives from the Church's statute. To the second point, which may tend to prove that dispensation does not apply to a solemn vow, it seems to me that the answer must be that, by divine law, a solemn vow nullifies as long as it obligates, so that, if they try to contract, apart from any human statute, they would not contract; but, because a case can arise in which it no longer obligates, then it would cease to nullify; and, in that case, the pope does not dispense unless we take "to dispense" as the equivalent of "to declare the law." The answer to the third point is, first, that the first consequent is null, for, in the state of innocence, marriage, since it was not a sacrament, would not have signified an indissoluble conjunction, and yet it would not have been

²⁵ Petrus Lombardus, *Sententiae in IV libris distinctus*, 3rd edn, vol. 2 (Grottaferrata, 1981), p. 419; Lib. IV, D. 26 c. 6.

²⁶ *Super quatuor libros sententiarum Petri Lombardi quaestiones subtilissimae*, vol. 4 (Brescia, 1591; Frankfurt, 1963), pp. 403 and 408. In *IV Sent.* D. 26 a. 1 q. 3 and a. 4 q. 2.

dissoluble. The answer, secondly, is that the antecedent is false; it does indeed signify the union of Christ and the Church like a consummated marriage, as the Master of the Sentences holds²⁷ (and Richard²⁸ following him), although the point is not made so fully by Richard. Furthermore, the consequent, by which it is inferred that bigamy is contracted in these cases, is not valid, and this only because the Church has not ordained that it is contracted. It is contracted only by division of the [one] flesh among many, or by the [one flesh] which divides [itself] among many [cf. Matt. 19:6].

Some extend this power to infidels, as does Panormitanus,²⁹ who says at c. *Novit* that they can be compelled by this power to observe at least the commands of the law of nature; but the opposite view is taken in c. *Gaudemus* [x 1.4.8], where it is said that they are bound not at all by [certain] canonical ordinances according to the apostle's [words], *For what have I to do to judge them that are without?* [1 Cor. 5:12]. They would be bound under censures by ecclesiastical ordinances commanding things which are of natural law. Second, since excommunication is nothing other than separation from the society of the faithful and participation in the sacraments, it follows that an infidel could not be excommunicated. Christ's words to Peter, when this power was promised to him, *Whatsoever thou shalt bind upon earth, it shall be bound also in heaven: and whatsoever thou shalt loose on earth, it shall be loosed also in heaven* [Matt. 16:19], and *Whatsoever you shall bind upon earth, shall be bound also in heaven: and whatsoever you shall loose upon earth, shall be loosed also in heaven* [Matt. 18:18], could be cited to the contrary. In these texts He says *whatsoever* universally. The answer is that both texts must be understood as referring to the faithful; however, these texts will be expounded more fully below.

Some, like the gloss on the Clementine *De haereticis* [Clem. 5.3.2], wish this [power] to be extended to the most secret sins of the heart. The opposite is held by almost all the doctors; and we must postulate for greater clarity that there is some sin which consists of an internal act alone, since it results in no external act. A sin resulting in an external act is different; and that again takes two forms: one that is a sin not on account of the external act in which

²⁷ See above n. 25.

²⁸ See above n. 26.

²⁹ *Abbatibus Panormitanis in quinque decretalibus*, vol. 2, fol. 34^{rb-12} x 2113.

it results, but only on account of a bad internal attitude, like giving alms for a bad end; the other which is a sin from the external act, because [that act] is forbidden. That has several forms: one is when what was done, and also [the identity of] the offender, can be proved juridically by two or three witnesses; another is when what was done can be proved judicially, but [the identity of] the offender cannot, as when a butchered corpse is found, but no one was present when the butchery took place; another is when neither the deed nor [the identity of] the offender can be proved judicially on account of a lack of witnesses to both. Second, it must be postulated that ecclesiastical power is not just for inflicting a punishment for a proven past crime, but for decreeing a punishment for something [by] a statute which looks only to the future, as in c. *Cognoscentes* [x 1.2.2]. A transgressor against it, by the very fact that he transgresses, incurs that punishment, as is seen in many statutes.

With these postulates, the answer is, first of all, that the Church can do nothing about sins of the heart which have not resulted in an external act. Durandus³⁰ adds: not just on account of a defect of knowledge, but one of jurisdiction. God reserved these to His own judgment, which scrutinizes *hearts and reins* [Ps. 7:10 (7:9)]; He leaves to men judgment concerning those things which are external. Durandus' opinion has much appearance of truth, because, if this were not on account of a defect of jurisdiction, but one of knowledge, the Church could act in these cases at least by decreeing in the case of future external acts which never will be susceptible of proof because of lack of witnesses; for punishment is incurred under law by an external act, even though it is concealed, as the doctors regularly hold, Pierre de la Palu expressly so.³¹

This proposition is proved, then, first, from the Lord's parable concerning the cockle [cf. Matt. 13:29], where, according to the doctors' exposition, the wicked are prohibited, under the name "cockle," from being torn up by the censure of excommunication when they cannot be distinguished from the good, understood by "wheat." Second, from c. *Cogitationis* [De poen. D. 1 c. 14], "No

³⁰ The difference between knowledge and power is discussed by Durandus de S. Porciano at *In IV Sent.* D. 18 q. 1, see *In Petri Lombardi sententias theologicas commentariorum libri IIII*, vol. 2 (Venice, 1571; Ridgewood, NJ, 1954), fol. 346^v. The 1512 edition cites D. 17, Richer cites D. 13.

³¹ *In IV Sent.* D. 13 q. 1. *Scriptum in Quantum Sententiarum*, fol. 56^v.

one suffers punishment for thinking," when the gloss says, "[not] by men, but certainly by God." Many chapters could be cited to prove this, such as c. *Sicut tuus literis* [x 5.3.33], c. *Tua nos* [x 5.3.34], c. *Erubescant* and c. *Consulasti* [C. 2 q. 5 c. 20]. Second, it is said, if it results in an external sin, but the act is one which is evil only on account of a bad internal attitude, ecclesiastical judicial power is not extended to such a sin, since those acts are not prohibited according to their substance, but only according to an internal attitude, to the punishment of which ecclesiastical power is not extended, nor is it extended to those sins.

Second, the same point is proved: that act cannot be proved a sin from its nature, and not just from lack of witnesses, unless it were proved from an [internal] attitude; therefore, just as the attitude is not subject to ecclesiastical power, so neither [is] that sin.

Third, it is said that ecclesiastical power is extended to a sin, known juridically, when the offender is unknown juridically. This is proved from c. *Quidam maligni spiritus* [C. 5 q. 1 c. 2], where, speaking of someone, "who in the silence of night in a public place of the city posted an accusation against Castor, an apostolic³² notary and secretary, recounting his crime," Pope Adrian says, "if he has not come forward nor confessed publicly, whoever he is who presumed to do this, or consented to such an iniquity, we decree by the spirit of God and our Lord Jesus Christ that he be deprived of participation in His holy body and blood." This is one case, according to William of Ockham,³³ in which recourse must be had to the ecclesiastical power in a civil crime.

Fourth, it is said that this power does not extend even by way of an ordinance to external sins which are forbidden in themselves, although neither they nor the [identity of the] offender can be proved juridically on account of lack of witnesses. This is proved from c. *Porro* [x 5.39.7], in which it is said that those who have laid violent hands on their brothers, who are not convicted but privately beg pardon, should be admonished to make satisfaction to those whom they have harmed and to present themselves to the apostolic see, since they cannot be absolved by any one else without a special mandate; therefore, they are excommunicated. It would be absurd

³² Here *apostolicum* replaces *nostrum* in the original canon.

³³ *Dialogus*, pt. 3, tr. 2, lib. 2, c. 13; *Opera plurima*, vol. 1, fol. ccciii^r.

to say that one who laid violent hands on a cleric, although secretly, was not excommunicated. In all of these things I am speaking of juridical power, which has to do with the external forum.

Chapter IV In which objections to the contrary are posited and resolved

Against the first of these four assertions it is objected that one guilty only of sins of the heart, by virtue of the Church's statute *Omnis utriusque sexus* [x 5.38.12], is bound to confess them in Eastertide; and, if he does not confess, he incurs the censure of excommunication, as is obvious from the said chapter. Therefore, ecclesiastical power is extended to those sins of the heart.

Second, an inquisitor of the faith who fails to proceed against heretics who have not committed any external act incurs the censure of excommunication, as is obvious in the Clementine *Multorum* [Clem. 5.3.1 ¶ 4] and the gloss there. Hence it is quite obvious that, by an ordinance of the Church Militant, an entirely secret offense necessarily incurs the penalties of suspension and excommunication; and ¶ *quasi vero* [Clem. 3.10.1 ¶ 5], where it is said of monks running about the courts of princes, "If they have presumed to transfer themselves to the said courts to inflict some harm on their prelates or monasteries, we wish them to incur the sentence of excommunication *ipso facto*," can be adduced in support of this. Here they are excommunicated not for transferring themselves to the courts of princes, but because they intend to inflict harm on a prelate or monastery, and thus for a purely internal act.

Third, there is an argument that, if the Church commands anyone under the penalty of excommunication to take someone as wife – namely, [the woman] to whom he previously had been betrothed, and if he utters those words externally and does not consent internally, he seems to be excommunicated, since he does not accept her as wife; and this is on account of the omission of a purely internal act, therefore, one can be excommunicated even for a purely internal act.

Next, there is an argument against the third and fourth assertions: first, by way of c. *Sicut tuis literis*, On simony [x 5.3.33], in which it is said that those who have given or even received money

are clearly culpable in so far as their offense was manifest to the Church (which does not judge concerning hidden things) and should suffer the canonical penalty. If it is not manifest, therefore, they are not to be punished. And, in c. *Erubescant* [D. 32 c. 11], it says of priests, deacons and subdeacons who have not got rid of their women that they are to be excluded from the dignity of their orders. And this is added immediately, "I am speaking of things manifest; God, however, is examiner and judge of all secrets." Second, there is an argument from Matthew 18, where this ecclesiastical power was instituted, that the form is given according to which it must be used. Now what is commanded there is that the accused must be denounced to the Church and convicted by two or three witnesses; therefore, this power is not extended to those external sins which cannot be proved.³⁴

To the first of these [points] the answer is, first of all, that confessing is an external act, and so that command is not applied immediately and *per se* to an internal act, although it may be applied to an external act which proceeds from an internal act. Second, according to Durandus,³⁵ the Church's command is applied principally to communion, which clearly is an external act, cognoscible in the external forum, because confession of all mortal sins is commanded by divine law for receiving communion worthily; and so the Church's command is applied to that act of sacramental confession only incidentally.

The answer to the second point is that in this case an inquisitor of the faith is not excommunicated for an internal act, but for omission of an external act, which can be proved juridically, just like the act of which it is the privation, as far as can be proved from itself.

The answer to the third point is that, in this case, he does not incur a sentence of excommunication, since he neither did nor committed anything which is subject to ecclesiastical judgment, just as, in the same way, neither would he who received the eucharist in Eastertide without the appropriate prior condition [i.e., not having confessed] be banned from entering a church, according to the tenor of that statute *Omnis utriusque sexus* [x 5.38.12].

The answer to the first argument against the last assertion is that these chapters must be understood as referring to a penalty imposed

³⁴ Du Pin adds here Richer's heading, "Solution to the Objections to the Contrary."

³⁵ In *Peiri Lombardi sententias*, vol. 2, fol. 345^v; In *IV Sent.* D. 17 q. 14.

by men. There are some canons which are not concerned with an automatic sentence, but with one that must be imposed, that is, a punishment is not inflicted on their transgressors *ipso facto*, but what must be inflicted is declared by a judge. Offenders against these canons are not subjected to that punishment unless they are notorious. Although the gloss on c. *Erubescant* [D. 32 c. 11] supports the argument for the opinion of those who say that a hidden crime does not incur irregularity,³⁶ nevertheless, the opposite of this opinion is determined sufficiently in c. *Questum* [X 1.11.17], where we read, "If the crimes mentioned, such as adultery, perjury, homicide, false witness, have not been proved by judicial proceedings or otherwise [been rendered] notorious, [the offenders], after penance, are not to be impeded in [the functions of] orders, except those accused of homicide." Therefore, homicides incur irregularity, even though they are not notorious.

To the second [argument], from the gospel text, the answer must be, in the same way, that this proceeding is understood of what must be punished by a judge and expressly with an ecclesiastical penalty. These things would require a fuller examination; but, because they only are incidental, not essential, to the principal argument, I omit them.

Chapter v Concerning those who restrict ecclesiastical power unduly

This power is restricted by some to a remarkable degree. Some say that it is extended by Christ's institution only to the punishment of sins in purely spiritual matters – namely, those things which are proper to the gospel law, such as sins committed against the articles [of faith] and against the sacraments, and not to sins which are against natural law, except at least in certain cases. William of Ockham seems to be of this opinion near the end of his *Dialogue*³⁷ and in the first part of the same book,³⁸ where he says, "Spiritual things are those which are proper to the Christian religion and

³⁶ An impediment to the exercise of ecclesiastical orders.

³⁷ *Dialogus*, pt. 3, tr. 2, lib. 3, c. 18. *Opera plurima*, vol. 1, fol. CCLXXIII^o

³⁸ *Ibid.*, pt. 1, lib. 6, c. 8. *Opera plurima*, vol. 1, fol. LIV^o.

which are found in no other sect, and which do not belong to the law of nature, such as those things which relate to dispensing the ecclesiastical sacraments and determining cases concerning the faith." Jean Gerson is of the same opinion in *De vita spirituali animae*,³⁹ where he says that in lands subject immediately to the supreme pontiff, as regards temporal matters, men are punished not with an ecclesiastical but with a lay punishment imposed for sins committed against the law of nature.

Nevertheless, it seems to me, saving better judgment, that this power is extended to every notorious mortal sin combined with contumacy. This is proved, first, from c. *Novit* [x 2.1.13], where Innocent III, writing to prelates established throughout France, says, "We do not intend to judge concerning a fief, judgment of which belongs to him, the king, but to decree concerning a sin, censure of which pertains undoubtedly to us – a censure which we can and should exercise over anyone whatever." It is known that he is speaking there of a sin committed by detaining another's possessions.

Second, it is proved by Christ's authority in Matthew 18[15], where, as will be shown below, this ecclesiastical power was established, *If thy brother shall offend against thee, go, and rebuke him between thee and him alone. If he shall hear thee, thou shalt gain thy brother* etc. In that text no distinction is made between this or that sin; but He speaks indifferently of every mortal sin. That He is speaking only of a mortal one is well known from what is added, *If he shall hear thee, thou shalt gain thy brother*; for no one is lost by a venial sin. Therefore, in regard to every mortal one, if he is not reformed by fraternal correction, he must be denounced to the Church; and, if he will not hear the Church, he must be excommunicated. Consequently, that power is extended by Christ's ordinance to all mortal sins, at least those that are notorious; and, in my judgment, this text merits very careful consideration.

Third, there is an argument that Paul excommunicated a public fornicator [cf. 1 Cor. 5:5]; and thus he says in the same chapter, *If any man that is named a brother, be a fornicator, or covetous, or a*

³⁹ The 1512 edition, followed by Richer and Du Pin, adds the reference *Lect. IV*, but Almain may have intended, rather, Lesson 3 [OC 3.153], "[The pope] has the power which a superior has over [his] subjects from natural law."

server of idols, or a drunkard, or an extortioner: with such a one, not so much as to eat [1 Cor. 5:11].

Fourth, there is an argument from the reasoning which Durandus⁴⁰ uses to prove this, and Saint Thomas⁴¹ also used it. He who is entitled to consider the end is entitled likewise to judge concerning those matters which should be ordered to the end, because the reason for those things which are ordered to the end is drawn from the end. The one who aims at some good end ought to choose those things which are congruent with the end and reject those things which impede it. For example, a physician should consider the health of the body; and it is his function to consider those things which conserve and those which impede health. But all human actions should be ordered to seeking eternal life. It belongs, therefore, to him or those whose function it is to consider the salvation of the soul and spiritual matters to judge concerning any actions through which [men] deviate or may deviate from their salvation in any respect. Gilles Carlier,⁴² in the tract which he compiled against those erring on the subject of the keys, in the last corollary, where he says that the ecclesiastical key is extended to compelling even laymen to paying a debt or giving up goods, is of this opinion.

It follows as a corollary from what has been said that this power is extended to compelling one who sells for more than a just price to make restitution, although not of more than half the just price. Who can doubt that such a seller is obliged to make restitution? By such a sale he sins against his brother, and, consequently, one must proceed against him according to the aforesaid gospel command, *If thy brother shall offend against thee* [Matt. 18:15]. This corollary is Panormitanus' opinion at c. *In civitate*,⁴³ where he says, "A cleric can be compelled before a tribunal to make restoration of what he has received beyond the just price." Next he adds, "I say the same of laymen, at least before an ecclesiastical tribunal." He speaks there of him who has received more than the just price, but [by] less than half the just price, as is sufficiently obvious by reading [the text].

If someone opposes these points by saying that a sin would be committed by anyone who summoned his neighbor before a lay

⁴⁰ *Circa originem potestatum*, in Vanderjagt, *Pignori*, p. 60.

⁴¹ *De regno*, II, 4 (1, 14): *Opera* (Rome), vol. 42, p. 466.

⁴² Cf. *De punitione peccatorum publicorum*, Mansi 29:955.

⁴³ *Abbas Panormitanus in quinque decretalium*, vol. 5, fol. 170^v: x § 19.6.

judge for an action involving mortal sin: the consequent holds good because anyone doing so contravenes the command, *If thy brother shall offend against thee*. Second, thus, that corollary just cited is contrary to c. *Cum dilecti* [x 3.17.3], in which it seems to be said that a purchase at less than the just price is valid, so long as it is not at less than half the just price.

In regard to the first point, the conclusion is denied. I say that each part of that command, *If thy brother shall offend against thee* (it contains three partial commands) is an affirmative command, and it binds only for the time during which the brother cannot otherwise be restrained from sin. So, if someone could restrain a man who is simply a layman by summoning him before a lay judge, he is not obliged then to denounce [him] to the Church. Therefore, an ecclesiastic should not attempt to use this power against a simple layman for a civil sin, when a lay judge is prepared to exercise his power over him, lest this power should seem to have been introduced to the harm of lay princes. But when a lay judge is lacking, or, if not lacking, he cannot act, or, if he could, he is unwilling to act, recourse must be had by Christ's command, to the ecclesiastical power.

The answer to the second point is that it is not stated in that chapter that buying below the just price, but above half of the just price, is invalid, and that the buyer must not be compelled to make up the just price. It is stated only that a purchase below half of the just price should be canceled, or the buyer must be compelled to make up the just price, from which it does not follow that, if it were above half of the just price, he should not be compelled. Nevertheless, it must be noted that this [ecclesiastical] power must not be used against any person unless the following three conditions obtain jointly, as Carlier shows very clearly in the tract against the Bohemians on the punishment of public ecclesiastical crimes.⁴⁴ The first is jurisdiction; the second, conviction; the third is unbroken peace. This third is sufficiently obvious from the Savior's parable of the cockle and the wheat [cf. Matt. 13:29].

⁴⁴ *De punitione peccatorum publicorum*, Mansi 29 887.

Chapter vi

In which it is shown⁴⁵ on whom supreme ecclesiastical power was conferred immediately by Christ

Consequently, we must see on whom this ecclesiastical power was conferred immediately. Suppose the first proposition is that it was conferred by Christ immediately on Peter, the first supreme pontiff. This is proved, first, because, after Peter replied to Christ's inquiry, *Whom do you say that I am? . . . Thou art Christ, the Son of the living God*, after some further words, Christ said to him, *I will give to thee the keys of the kingdom of heaven. Whatsoever thou shalt bind upon earth, it shall be bound also in heaven: and whatsoever thou shalt loose on earth, it shall be loosed also in heaven* [Matt. 16:15-16, 19]. Therefore, Christ, because he is faithful and cannot deny Himself, then conferred on blessed Peter the keys of the kingdom of heaven, one of which is that coercive power. Second, it is obvious, because *Feed My sheep. . . Feed My lambs* [John 21:17, 15] was said by Christ to blessed Peter. Of these words the ordinary gloss says, "Feeding is comforting the believers lest they fail, providing earthly aid, if it is necessary, exhibiting examples of the virtues, withstanding foes, correcting sinners." This last is known to belong to this coercive power. A sufficient number of doctors agree on this, saying that Christ made him His general vicar then; and they cite innumerable texts for this. The second proposition [is that] Christ conferred this power immediately on the Church, understanding the Church as being the gathering of all the faithful, or as the gathering of all the greater and lesser prelates, who succeeded the apostles and disciples, or as the general council representing the Church. This is proved by the aforesaid saying of Christ, *If thy brother shall offend against thee* etc. [Matt. 18:15], where Christ commanded that the one unwilling to be corrected by fraternal correction be denounced to the Church and, if he would not heed the Church's admonition, that he be excommunicated. He gives the Church authority to excommunicate, saying, *Whatever you shall bind* etc. [Matt. 18:18]; and that it is to be understood of the Church, in so far as it is the gathering of the faithful, is obvious from what He said later, *Tell*

⁴⁵ Richer and Du Pin add, "from divine law."

the Church. And if he will not hear the Church, let him be to thee as the heathen and publican [Matt. 18:17]. He adds immediately in the plural, *Whatever you shall bind on earth* etc. Therefore, He does not take the Church there for a single person, but for a number. That He does not understand this as referring to binding and loosing in the secret and penitential forum, as Pierre de la Palu says in his tract on this subject,⁴⁶ is quite obvious from what has been said, for no one ought to report or reveal another's sin in the secret forum, unless there were some circumstance of one's own sin which would change its character and one's own sin could not be confessed without revealing another's. But Christ enjoined there that the other's sin be reported and revealed, and that he whose sin it is be bound or loosed; therefore, He is speaking of binding and loosing in the public and external forum.

Second, it is proved by what is said in Acts 15[:22-3, 28-9]. That chapter relates how, in the council of the apostles and the elders, the question was raised as to the ending of the commands of the [Old] Law and whether converts from among the gentiles were to be circumcised. *It pleased the apostles and ancients, with the whole Church, to choose men of their company, and to send to Antioch, with Paul and Barnabas, namely, Judas, who was surnamed Barsabas, and Silas, chief men among the brethren. Writing by their hands: The apostles and ancients, brethren* etc. After some further points, the council's conclusion is added, *It hath seemed good to the Holy Ghost and to us, to lay no further burden upon you than these necessary things: That you abstain from things sacrificed to idols, and from blood, and from things strangled, and from fornication.* The text there does not say that Peter imposed this, although he was present, but that the whole council of the apostles and the elders [did so]; therefore, the power of ordaining or commanding, which pertains to the power of jurisdiction, belongs to the Church.

Third, it is proved by Gregory's authority in c. [Sicut sancti D. 15 c. 2], "I acknowledge that I accept and venerate the four councils, those of Nicaea, Constantinople, Ephesus and Chalcedon, just as I do the four books of the holy gospel." The cause is given at the end of the canon, "because they were established by universal consent, whoever presumes to loose those whom they bind or bind

⁴⁶ *Articulus circa materiam confessionum*, ed. Berbicier (Paris, 1506)

those whom they loose destroys himself, and not them." The text does not say, "because they were constituted by the consent of Peter or of the supreme pontiff," nor "those whom the supreme pontiff binds," but "those whom the fathers bind." This is supported by c. *Decrevit* [D. 88 c. 1], saying, "The holy synod decreed" – and not, "the supreme pontiff decreed" – to indicate that the authority to define resides in the synod; and by c. *Nimis* [X 2.24.30], where the supreme pontiff ordained, by the holy council's authority – and not by his own – that clerics should not be compelled to take an oath of fealty to secular persons from whom they hold nothing temporal.

Fourth, the Church can bestow indulgences, which belongs to the keys of the external forum; therefore, the Church has those keys. The antecedent is proved: indulgences are given from the Church's treasury, not the pope's; therefore, *a fortiori* the Church has greater power to give them than the pope. Likewise the council, representing the Church, can make canons imposing a sentence of deposition and excommunication, as is obvious from the Council of Carthage, as we find in c. *Placuit* [C. 11 q. 1 c. 43], "It pleased [us to ordain] that anyone who should have sought a summary judgment from the emperor should be deprived of his own office." Likewise, it can depose anyone, which belongs to jurisdiction, as is obvious from c. *Ex gestis* [X 3.4.2], where it is stated, "Anastasius, cardinal presbyter of the title of San Marcello, was deposed canonically by all, because, contrary to the laws, he deserted his parish for five years"; it is not said there that he was deposed by the pope alone. Geoffrey de Montélu,⁴⁷ abbot of Saint Honorat on the isle of Lérins, deals with this subject very fully in the tract which he composed at the time of the Council of Basel, reviewing the individual acts of jurisdiction, such as excommunications, indulgences, dispensations, issuing canons and so on, as you may see at great length there.

From all of these things it follows as a corollary, conformably to Jean Gerson,⁴⁸ that by those words, *Tell the Church* [Matt. 18:17], the power of taking cognizance was given to the Church and the general council; and by the following words, *If he will not hear the*

⁴⁷ *Quomodo consilium generale potest cognoscere de causis particularibus*, in *Nobilissimus ac praestantissimus tractatus Nicolai de Tudesco super Consilio Basiliensi* (Lyons, 1506), fols. [65^v]–[72^r].

⁴⁸ *De potestate ecclesiastica*, Consideration 2. OC 6 216–17.

Church etc., the power of sentencing after investigation was given and that of imposing a punishment on those not submitting to a sentence. By the following words, *Whatever you shall bind* etc. [Matt. 18:18], first, the power of binding someone by excommunication and loosing from the same was given to the Church. Second, the power was given of binding someone – assuming a reasonable cause – by a statute or command which everyone is bound to obey and loosing him from a command for a similar cause; this is the basis of the power to dispense. Third, the power was given of binding someone by a temporal punishment for a crime and loosing from the same for a reasonable cause by bestowal of indulgences. Fourth, the power was given of binding anyone in the cure of souls, to undertake which is, according to the Wise Man's words, to be *ensnared with the words of thy mouth, and caught with thy own words* [Prov. 6:2], and of releasing him from the same in the same cure for a reasonable cause, as will be explained more fully below. It follows again that legislative power is in the Church, contrary to Tommaso de Vio in his Chapter xii; and this will be demonstrated more fully below. For the present I omit discussion of the power given immediately to the apostles – referring always to that power of jurisdiction.

Chapter vii

In which, from the primitive Church's practice, the power of jurisdiction given to the Church is compared to that given to Peter or to the supreme pontiffs, his successors, in regard to its extent

We must see, consequently, since the power of ecclesiastical jurisdiction is in the Church, and likewise also in the supreme pontiff, from Christ's immediate conferment, how the Church is related to the supreme pontiff in regard to this power, whether in a relationship of equality, or of greater inequality, or of lesser inequality; and this is the principal subject of this tract. For this purpose one must posit that there are many factors in the superiority of the greater power. First, there is an appeal from lesser to greater. Second, he who is established in the greater power can judge him who is established in the lesser one. Third, [the greater] can limit the operation

of the lesser power and establish certain laws according to which the lesser is bound to proceed. Fourth, it can deprive the person established in the lesser power if a crime requires this.

Second, we must posit that, when I compare the Church or the council to the supreme pontiff, I understand it indifferently of the Church or the council representing it, apart from the supreme pontiff, for instance, because there is none or, if there is, he cannot participate, because he is a captive detained among infidels, or, though he is able [to participate], he contumaciously refuses to do so, although duly summoned.

Having presupposed these points, I posit this against Master Tommaso in Chapter xvii of his tract, "The Church or the general council is superior to the supreme pontiff in this power." Although this proposition was determined by the holy Councils of Constance and Basel, so that it should be venerated like the holy gospel, nevertheless, because he thinks those councils of no power at the time of that determination, I will proceed against him in another way.

First, by showing this proposition not to be a novel invention, as that doctor says, but the long-standing opinion of the doctors. Augustine⁴⁹ mentions the deposition of Caecilian, bishop of Carthage, unjustly carried out by the African bishops, who, seeing the world maintaining communion with Caecilian and not with the one they had appointed, also that the letters of communication from the churches across the sea (who, in relation to us, are this side of the sea) were transmitted [to Caecilian], "chose," Augustine says "it is said, to move a case against Caecilian so that it could be handled in two ways, before" Melchiades, bishop of Rome, and the bishops "across the sea, prepared for either: if they had been able by any cunning use of false incrimination to overcome him completely, to sate their greed as fully as possible; but if they could not, to persist in the same perversity, but now as if they had a complaint to make—that they had endured bad judges, which is the plea of all bad litigants when they have been vanquished by most manifest truth." At once he adds, to the point, "As if it could not be said to them and said most justly, 'Look, let us suppose that those bishops who judged in Rome were not good judges. There still remains a plenary council of the universal Church, where a case could be brought

⁴⁹ Ep. 162, vii, 19: PL 33.169

against those judges, so that, if they were shown to have judged badly, their sentences could be annulled.” Two things follow manifestly from these words. The first [is] that an appeal can be made not just from the supreme pontiff’s sentence but from that of the supreme pontiff together with a particular council to the universal council. The second is that a sentence of the supreme pontiff together with a particular council can be annulled by a universal council. Therefore, he should read, read it through and read it again; and [then] he will not say that this is Jean Gerson’s novel invention, but Augustine’s ancient truth.

A second proof is that in canon 21 of the eighth council, which begins, “We define that utterly no one,” part of which is found in c. *Definimus* [D. 22 c. 7], it is said that, “The universal synod is bound to hear with due reverence any question [that has] arisen concerning the Roman see and to dispose of it, not, however, daring to pronounce a sentence on the Roman pontiff.” Notice that, although [the council] has the power to define every question concerning the Roman see, nevertheless, it should do this with reverence on account of the primacy [of that see]; and this is well known to be an element in superior authority.

Third, there is an argument from a text of Pope Damasus, which is placed as Letter 72 of Ambrose’s letters (79 in the printed editions).⁵⁰ [When] those deputed by the Council of Capua to take cognizance of Bishop Bonosus, accused of certain offenses, examined Pope Damasus’ sentence on the advice of Ambrose (as is obvious from Letter 71),⁵¹ Damasus responded: “Since the judgment of the Council of Capua was to the effect that judges from the same region be granted to Bishop Bonosus and his accusers, especially Macedonians, who, with the bishop of Thessalonica, might take cognizance of what he had done, we perceive that the form of judging could not be a matter for us, for, if the synod still were in being, we could decide rightly concerning those things which your series of documents enumerates. Therefore, it is for you who receive this judgment to impose a sentence concerning the whole matter, and not to give the accusers or the accused an opportunity for flight or evasion; for you, whom the synod has chosen to examine [the case],

⁵⁰ *Epistola de causa Bonosi* PL 16.1223.

⁵¹ Cf. *Epistola* 56. PL 16.1222.

have received authority to act on the synod's behalf." Notice what Pope Damasus says, that he could not take cognizance of that case, which he could have done, if there had then been a complete synod, that is, if it had not committed the judgment to others. And that those words are not Ambrose's is obvious from what follows, for the text continues,⁵² "When Bishop Bonosus, after judgment, sent to our brother Ambrose, who had advised his sentence, which forbade him to break in upon and enter a church, he was answered that he should dare nothing [but that all things should be done in order modestly, patiently,] nor should anything be attempted against your sentence, so that you, to whom the synod gave this authority, might ordain what seemed to you conformable to justice." Ambrose did not say this of himself. Also, there follows, "Therefore, the first thing is that they should judge to whom the faculty of judging was given, for you, as we have written, decree on behalf of the whole synod; it is not for us to judge as if by the authority of the synod." From these points it is quite clear that Pope Damasus acknowledged that not just the council, but those deputed by the council, in that case for which they were deputed, were superior to him in judging.

Fourth, there is an argument that the Lord conferred the keys on Peter, the supreme pontiff, as a sign and personification of the Church; therefore, He conferred [them] more fully and in a higher degree on the Church. The antecedent is proved by Augustine on John, as recorded in c. *Quodcunque* [C. 24 q. 1 c. 6], "Peter, when he accepted the keys, signified holy Church." Nor is it valid to say, as Tommaso de Vio does, that this is to be understood in this sense: that the keys were conferred not only on Peter's person but on his office, which will endure forever, and, because Peter's office is that of the head, which has the function of distributing [power] throughout the rest of the body, therefore, things given to the office of the head are said to be given and are given to the rest of the body. I prove that Augustine did not say that the keys were given to the Church in that sense, because, on that basis, [to say that] the keys were given to the Church would mean that they were given for the eventual benefit of the Church, not that they were given to the

⁵² The 1512 edition omits or misprints parts of this quotation. Richer's correction of what he describes as a corrupt text is given in brackets

Church as such – which manifestly is contrary to what Augustine says in the same chapter, “If this were said to Peter alone,” namely, *Whatsoever thou shalt bind* etc. [Matt. 16:19], “the Church does not do this,” where this consequent, that the Church does not bind and loose, is dismissed as inappropriate

Likewise, Augustine on John, on the words *Thou shalt be called Cephas* [John 1:42],⁵³ “He changed his name and made Peter from Simon. Peter [is] from ‘rock’; the rock [is] the Church; therefore, the Church is personified in Peter’s name.” In that sense Peter and any successor of his uses the keys on behalf of the universal Church, which he represents, just as any king exercises acts of jurisdiction on the community’s behalf; thus the supreme pontiff excommunicates, grants benefices, and likewise indulgences, and so on in regard to other acts of ecclesiastical power, by authority of the whole Church. This is reasonable in so far as the prayers of which the excommunicate is deprived are the Church’s and not the supreme pontiff’s; hence prelates are said to deprive [the excommunicate] of those [prayers] in the Church’s name, not in their own. Therefore, the power to deprive someone of participation in those [prayers] will belong to the whole Church. Hence a certain doctor⁵⁴ says that Paul did not wish to excommunicate the public fornicator, except when the Corinthians were assembled. Accordingly, we read as follows, *I indeed, absent in body, but present in spirit, have already judged, as though I were present, him that hath so done. In the name of our Lord Jesus Christ, you being gathered together, and my spirit, with the power of our Lord Jesus; To deliver such a one to Satan for the destruction of the flesh* etc [1 Cor. 5:3–5].

Accordingly the following argument must be granted. God, when creating the human race, conferred upon it a natural power of jurisdiction for a natural end, and did not, ordinarily, bestow this upon any individual. Rather, it is imparted by the community to individual persons, who are the community’s ministers in the exercise of that jurisdiction, as is obvious from Chapter 1. In the same way, Christ, regenerating the Church for a supernatural end, imparted to it positive power for that end; and this [power] (because [the

⁵³ *In Iohannis evangelium tractatus CXXIV*, vi, 14. CC 36:74.

⁵⁴ It is unclear whom Almain has in mind.

Church] cannot always be assembled) it could, and indeed was bound to, impart to some individual, who was to exercise this power as the Church's minister. And just as God sometimes preempts the community by imparting civil power to some individual (as he did to Moses, over the people of Israel), so Christ preempted the Church by imparting positive ecclesiastical power to Peter, so that he might exercise it on the Church's behalf – [power] which the Church could have imparted to him, since it already had been established and conferred on the Church, as will be made clear below.

Fifth, there is this argument. Suppose that power over the whole Church had been conferred on the pope in such a way that, although he exercised it to the Church's destruction and not its edification, and although he were harmful to the whole Church in regard to the achievement of [its] end, nevertheless, he could not be punished by the whole Church. From this it would follow, first, that the ecclesiastical polity was not as well ordered as the civil polity, because it would be against the good ordering of the civil polity not to be able to remove a member whose conduct might result in the destruction of the whole. Second, this would be to the detriment of the pope himself, for he would be more wretched than all men if he could not be restrained from evil.

Sixth, the pope is a son of the universal Church; therefore, he is subject to it. The antecedent is obvious from Ambrose in *Liber de symbola*,³⁵ "He will not have God as Father [in heaven] who has refused to have the Church as mother [on earth]." The supreme pontiff must, therefore, beware of denying obedience to the Church. For *The foolish man despiseth his mother* [Prov. 15:20] and *A foolish son is the sorrow of his mother* [Prov. 10:1].

Seventh, there is this argument. Suppose that there are two men contending for the papacy, the universal Church or the council representing it is their judge; therefore, it has jurisdiction and superiority over both. The consequent is valid, for no one is the ordinary judge of anyone else unless he is the other's superior in jurisdiction; and the antecedent is absolutely obvious from c. *Si duo* [D. 79 c. 8].³⁶

³⁵ Quodvultdeus (Pseudo-Ambrose), Sermo 3 *De symbola*, XIII CC 60.363.

³⁶ Richer's text wrongly departs from the 1512 edition, replacing "unless . . . antecedent" with "however, that the Church is superior in jurisdiction"

Blessed Jerome was of this opinion, that the Church or the universal council representing it is greater than the supreme pontiff in jurisdiction, saying in c. *Legimus* [D. 93 c. 24 ¶ 1], "If authority is required, the world is greater than the City [of Rome]" Nor does the answer of Brother Tommaso de Vio, arguing that Jerome speaks of greatness in merits, have any appearance of truth; for Jerome does not say, "If merits are required," but, "If authority" etc.; and so he is speaking of greatness in power and not in merits.

In c. *Praecipue* [C. 11 q. 3 c. 3], Pope Nicholas [I], recognizing this superiority, writes to King Lothar that, unless he avoided the society of his concubine, who had been excommunicated, he would, having brought two or three witnesses, denounce [him] to holy Church; and so he would be like the heathen and the publican. It is certain that [the pope] was not saying that he would denounce [him] to himself. In ¶ *Hinc etiam* [D. 17 post c. 6], Pope Symmachus, who, when he was accused by some, assembled in a council by his authority, by which judgment was given between him and his accusers, recognized this superiority. What is written in Acts, *When the apostles, who were in Jerusalem, had heard that Samaria had received the word of God, they sent unto them Peter and John* [Acts 8 14], also could be adduced to corroborate the truth; and, consequently, that assembly of apostles was greater than Peter, according to what is written in Luke, *For I also am a man subject to authority, having under me soldiers: and I say to one, Go, and he goeth; and to another, Come, and he cometh; and to my servant, Do this, and he doeth it* [Luke 7:8]. Nor is there any force in the solution of Tommaso de Vio, who says in Chapter v of his tract that Peter's inferiority would not follow from this in any way, for the Holy Spirit was sent by the Son, according to *I will send [Him] to you* etc. [John 16:7]. Moreover, the same brother at once adds, "He is a poor theologian who deduces being subject from being sent"; for it is entirely valid to argue as follows: the Holy Spirit is sent by the Son; therefore, He is from the Son or inferior to Him; and so it must be admitted that Peter is from the Church. Similarly, it cannot be said rationally that Peter was sent by way of counsel and not command, since he was not sent alone; but John [was sent] with him. And there is so much testimony concerning the superiority of the Church and the council to the supreme pontiff, besides the decisions of the Councils

of Constance and Basel, which the same brother assails with a blasphemous tongue.

Similarly, there is so much rational persuasion to be derived from the light of nature, if the ends of jurisdiction are duly considered – for jurisdictions are not individual possessions – that no one of sound mind could doubt that superiority. But the Enemy, who does not cease to sow cockle in the Lord's field himself and by means of his ministers [cf. Matt. 13:29], knowing that the Church could not be reformed in head and members otherwise than through a council, led certain flatterers, who wish to please men rather than God and seek their own ends rather than those of Jesus Christ, into this error (most pernicious to the Church), that the supreme pontiff is not subject to it. If he sells individual benefices, distributes them to sacrilegious and most pernicious persons, or strives to destroy the Church in every way, there would be no way to resist him unless the Church were superior to him. From that proposition, sufficiently proved in my judgment, nevertheless, what must be proved below by descending to individual acts of jurisdiction is inferred.

First, the gloss at c. *Cum ex illo* [X 1.7.1], saying that those things which are contained in these verses:

The pope alone restores, alone deposes;
Alone divides, unites, acquits, convicts;
He unties knots, summons a general synod,
Which he transfers and changes; and from him
No one at all appeals.

pertain to the pope alone, is false if it excludes the council.

It follows, secondly, that the pope on the one hand does not have greater power than all the rest of the Church on the other; nor is he equal [in power] to the whole Church together with himself; and I shall say the same of a universal council legitimately assembled, whether there is a pope or not.⁵⁷ This corollary is directly contrary to Tommaso de Vio throughout [his] Chapters vi and vii; in Chapter

⁵⁷ The translation here follows the 1512 text, where the verb in this clause is *est*. Richer, followed by Du Pin, emended this to *adest*, so that the meaning would be "whether the pope is present or not." Either could be what Almain had in mind.

vi he posits that a council, even authorized by the pope, is not of greater authority than the pope himself. This corollary is obvious, first, from what the gloss has at c. *Legimus* [D. 93 c. 24], "The statutes of a general council prevail over the pope's, if they are contradictory." Hence, although Pope Leo contradicted the decree of the Council of Chalcedon that the see of Constantinople has precedence over that of Alexandria, nevertheless, the council's decree prevailed over his contradictory one through c. *Antiqua* [x 5.33.23] and c. *Renovantes* [D. 22 c. 6]. Nicholas of Cusa⁵⁸ shows this very clearly. Hence it happens that the general custom of the Church, which is introduced by unanimous consent, abrogates a pontifical statute.

This corollary is proved, secondly, as far as the first point, [that the pope is not of greater power than the rest of the Church]. If the supreme pontiff had jurisdiction over all the rest in his own right categorically, he could then exercise any act of jurisdiction over all of it, even against its will. The consequent is obvious, because the power of jurisdiction in the external forum can be exercised on those who are unwilling, and the falsity of the consequent is proved: he cannot excommunicate or interdict all of it categorically, as is well known; nor can he bind it to anything against its will, as is obvious from Augustine in c. *In istis* [Gratian's dictum following D. 4 c. 3],⁵⁹ "Laws are instituted when they are promulgated; they are ratified when they are approved by the behavior of those observing them." In the same canon it is proved from the example of Pope Telesphorus, who decreed that the clergy should fast generally from Quinquagesima Sunday;⁶⁰ and no other act of jurisdiction can be cited which he could exercise over all the rest [of the Church], even against its will.

It follows, third, that ecclesiastical power is in the Church before it has been in any supreme pontiff. This is the proof. Ecclesiastical power was instituted and conferred on the Church in Matthew 18, as is proved sufficiently from what has been said; and Jean Gerson⁶¹ posits this. But at that time no one yet was supreme pontiff; nor was there one afterwards until the Resurrection, when *Feed My*

⁵⁸ *De concordantia catholica* [rm], I, xvi: *Opera*, vol. 14, pt. 1, p. 83.

⁵⁹ This is a dictum of Gratian following a text by Augustine.

⁶⁰ This Sunday preceded the first in Lent.

⁶¹ *De potestate ecclesiastica*, Consideration 4. OC 6.216-18.

sheep [John 21:17] was said to Peter. Therefore, ecclesiastical power was in the Church before being in the supreme pontiff, just as was stated above, that coercive civil power was in the people before it was in the king, indeed is in [the people] naturally.

From this corollary another follows, that, even if Christ had not appointed Peter as supreme pontiff, the Church could have done so. This corollary was expressed by Henry of Hesse,⁶² as I have found in a certain extract from his works. This corollary is obvious: since that ecclesiastical power in its fullness was in the Church beforehand, the Church could have entrusted it to someone, from whom it could not take it away except for a reasonable cause, as a people has entrusted civil power to a king. Therefore, the Church could have appointed someone as supreme pontiff.

The same corollary is proved, secondly and clearly, in my judgment, since the power to elect the pope was in the Church, after Peter's death, not from Peter, as will be proved below, and therefore, from Christ. But there is no evidence for its being conferred on the Church unless in Matthew 18. For, when Peter was told, *Feed My sheep*, nothing was conferred on the Church, but on Peter alone. Therefore, the power to elect the pope existed before Peter was pope; and so it appears more probable to say that Christ, when He made Peter supreme pontiff, preempted the Church and conferred freely on Peter what the Church could have ordained by Christ's institution, than that He preempted Peter by giving the apostles the power of [holy] orders, according to the fantasy of Brother Tommaso de Vio in [his] Chapter III.

Chapter VIII

In which the objections of [our] adversaries are posited and answered

The enemies of truth strive to prove the opposite of the proposition established in the preceding chapter by many arguments. First, the pope is the head of the universal Church, and not just of its individual members. That is proved, first of all, from the authority of the Council of Constance itself before and after Martin V's election,⁶³

⁶² Henry of Langenstein, *Constitutum pacis*, c. 14: Du Pin 2.827

⁶³ *Inter cunctas*, Mansi 27.1209.

where the proposition of John Hus, "Peter neither is nor was head of the holy catholic Church," is condemned along with that other one, "There is not a particle of evidence that there needs to be one head ruling the Church in spiritual matters, which is in a continuous relationship with the Church Militant." Here the view that Peter was not head of the catholic Church is expressly condemned, for catholic is the same as universal. Jerome says of this in the book *De ortu et obitu sanctorum in novo testamento*,⁶⁴ "Peter is the chief support in Christ's Church; Cephas is the principality and head of Christ's body." Tommaso de Vio develops this argument in his Chapter vi.

Second, *Feed My sheep* [John 21:17] was said to Peter alone. In this Christ established the Church's monarchical government; and, if this ridiculous response is given, that Christ said to Peter, *Feed My sheep*, not "My Church," as if He made him the shepherd of the individual sheep, not of the Church itself, which signifies the whole made up from all the sheep, this is excluded manifestly from what is said in the prayer,⁶⁵ "God, shepherd and ruler of all the faithful, your servant N., whom you wished to preside as the shepherd, leading Your Church"; and the pope is called "ruler of the universal Church" and "guide of the Lord's flock" in the Council of Lyons in c. *Ubi periculum* [vi 1.6.3 ¶ 4]. It is obvious there that, with respect to the Church and the flock, which signify collective bodies, and not just with respect to individual persons, the pope is the shepherd, ruler and guide.

Furthermore, the Savior says, *Other sheep I have* etc.; and He adds, *There shall be one fold and one shepherd* [John 10:16]. But it is certain that the fold signifies one which contains sheep. There is an argument from this text as follows: the Church, being made up of Jews and gentiles, is the fold; and Peter, to whom was said, *Feed My sheep*, is the shepherd of that fold; therefore, the Church, being one, is not superior to the pope but inferior to him, as a fold is inferior to a shepherd. It is confirmed because the Church or the council, as distinct from the pope, is either the sheep, the fold or the shepherd. It is not the sheep, because the Lord says that the

⁶⁴ Isidore of Seville was the actual author; see PL 83:149. Migne's text says, "of the Church in Christ."

⁶⁵ *Roman Missal*, "Prayer for the Lord Pope"

fold must be made up of both groups of sheep; nor is it the shepherd, because, since Peter is the Church's one shepherd, as has been shown, and the Church would be another shepherd, there would then be two shepherds, contrary to the Lord's saying, *There shall be . . . one shepherd*. Therefore, [the Church] is the fold; and, since it is not a fold belonging to no shepherd, it is the one fold of only one shepherd, who is the ruler and guide of the Lord's flock.

Third, there is an argument that the pope is as much the shepherd of the catholic Church as any bishop [is] of his church; but any bishop is the bishop of individual persons and of the whole gathering of them into one community; therefore, the pope. . . This is confirmed, because, since "church" is a collective noun and signifies the collective of the faithful, as is said in c. *Ecclesia* [De cons. D. 1 c. 8], and a bishop is called bishop of such a church, it is necessary that he be bishop of this church first, and of the particular persons secondarily; and thus the pope, who is entitled the bishop of the catholic Church, and not of these, or of all, particular Christians, is bishop of the catholic Church first, and of its members secondarily. When it is said that he is the bishop of the catholic Church, the distributive sense [of the term "church"] is appropriate, just as when it is said that heaven touches all things.

Fourth, there is an argument that the pope has supreme power in God's Church; therefore, he is not inferior to the Church. The antecedent is obvious from the condemnation (already mentioned) by Martin V in the Council of Constance,⁶⁶ where, in a reference to the pope, he is called the one who has supreme power in God's Church. The consequent is proved, because nothing greater can be conceived in God's Church as being superior to the supreme authority in it. Indeed, it follows from this that both the Church and the council are inferior to the pope, because there are not two supreme powers in God's Church. Since plurality of sovereignty⁶⁷ is bad, as is obvious from the *Metaphysics* XII,⁶⁸ it cannot come from Jesus Christ, the supremely good, Who wishes His Church to be organized in the best way. This is confirmed by the authority of

⁶⁶ *Inter cunctas*, Mansi 27.1212.

⁶⁷ Literally, "of principates."

⁶⁸ In fact *Metaphysics*, XI, 10

Innocent III in the general council⁶⁹ in c. *Cum ex eo* [x 5.38.14], where it is said that the Roman pontiff has the plenitude of power. Many other chapters could be cited in support of this.

Fifth, there is an argument that the pope is the nearest and immediate vicar of Christ, not of the apostles; therefore, he has no power superior to his on earth. The antecedent is obvious from the same condemnation of articles by Martin V in the Council of Constance.⁷⁰ The consequent is obvious, because nothing is nearer and more immediate than what is nearest and most immediate; and from this it is obvious, first, that it is erroneous to say that the Church, as distinct from the pope, has immediate authority from Christ over the pope; for if so, the Church, not the pope, would be Christ's immediate vicar. It is impossible for both of two subordinate [powers] to be equally near and immediate to Christ. This is confirmed by the authority of Saint Thomas,⁷¹ who says, "Christ's vicar in his primacy and providence serves the universal Church, subject to Christ, like a faithful minister"; and he says that to think the opposite is erroneous.

These are the arguments on which the aforesaid Brother Tommaso de Vio principally founds his case.

Sixth, there is an argument from many texts. It is said in c. *Significasti* [x 1.6.4] that general councils receive authority from the pope; therefore, they are not over the pope, since the pope cannot give anyone coercive power over himself. He can commit to anyone power to absolve him of sins; but he cannot subject himself to anyone who could bind him with, or loose him from, the bond of excommunication, as Saint Thomas says.⁷² Likewise, in c. *Ita Dominus* [D. 19 c. 7], "The Lord Jesus Christ so wished the gift of the power of the keys to belong to the office of all the apostles that He placed [it] principally in most blessed Peter, the chief of all the apostles, so that from him, as from a head, He might pour out His gifts upon the whole body." It is obvious from that text that neither the Church, nor the council nor any person can have any ecclesiastical jurisdiction except in so far as it is granted by the pope. Likewise, in c. *Nemo* [C. 9 q. 3 c. 13], "No one will judge the first see.

⁶⁹ The Fourth Lateran Council.

⁷⁰ See above n 66

⁷¹ *Contra errores Gracorum*, pars altera, c. 33 *Opera* (Rome), vol. 40A, pp. 101-2.

⁷² *In IV Sent.* D. 18 q. 2 a 3 *Opera* (Parma), vol. 7, pt. 2, p. 818.

The judge will be judged neither by the emperor, nor by all the clergy, nor by the kings nor by the people." On that phrase "by all the clergy" rests the conclusion that the council cannot judge the pope, as follows in the gloss on the same text. There are innumerable other texts, but the answer to all of them is similar.

Reply to the arguments of Tommaso de Vio⁷³

To the first: John, patriarch of Antioch,⁷⁴ a truly learned man, who was at the Council of Basel, whom Panormitanus⁷⁵ mentions in his tract on Eugenius IV's deposition, denies that the pope is head of the whole Church categorically, even if the reference is to the ministerial head, for it is known to be true of [Christ], the principal head. We must consider, he says, that being head denotes preeminence and superiority, which the supreme pontiff does not have over the Church, since he is not the Church's lord, but its minister; for *Thou art Peter; and upon this rock I will build My Church* [Matt. 16:18] were Christ's words to Peter, not, "I will build thy Church." Now the greater is *he that sitteth at table*; and the lesser, *he that serveth*, according to the Savior's words [Luke 22:27]. Therefore, the ministering servant is inferior, not superior, to the mistress. Nevertheless, with respect to the individual churches, the pope is ministerial head, because, by virtue of the ministry committed to Peter, he has superiority over them. Wherefore, Pope Gelasius says in c. *Quamvis universae* [D. 21 c. 3], "Although all the catholic and apostolic churches established throughout the world are one as Christ's dwelling, nevertheless, the holy Roman catholic and apostolic church was placed above the other churches not by synodal decisions but by the Lord's voice" etc. He does not say there that the Roman church is set before the universal Church, which is Christ's dwelling, but before other individual churches as distinct from the Roman church. He responds to all the texts which proclaim that the pope is head of the Church that this applies to individual churches, and not to the whole [Church]. Nicholas of Cusa⁷⁶

⁷³ Richer added this heading.

⁷⁴ Mansi 29:525, 526, 528-9

⁷⁵ No known work of this jurist mentions the patriarch.

⁷⁶ *De concordantia catholica*, II, xxxiv, 259. *Nicolas de Cusa opera omnia*, vol. 14, pt 2, p. 302

agrees with him, saying that Peter, and any other supreme pontiff, was appointed as the superior of individuals, but not of all. They would answer the second argument, in which it is proved that he is shepherd of the universal Church, in the same way; and, consequently, it would be denied that one should say that he is primarily the head and shepherd of some assembly as a whole, but of individual persons secondarily.

Second, we can reply to the argument thus: although it is granted that Peter, or any supreme pontiff, is ministerial head of the whole Church, nevertheless, it is not necessary for every characteristic of a head in the strict sense to be found in this head by analogy, and this especially since the whole Church is not called Peter's body but only Christ's, as is obvious where, *We, being many, are one body in Christ* [Rom. 12:5] is said. So, for him to be called head of the Church, it is not necessary that he be superior in authority to all of the rest (even if it is gathered together as one [body] by its own act or that of its legates, representing its principal parts); but it is enough for him to have superiority over any individual member and to be able to exercise jurisdiction throughout the whole body dispersed, as it usually is. Furthermore, he is called shepherd of the whole universal Church as far as the administration of the spiritual food of God's word and the sacraments. Those are not exercised by the council as acts of judgment, but by individual persons. That these two arguments should not prevail etc. is obvious. For, although the king is called head of the kingdom in civil matters, nevertheless, it is not to be admitted that he is superior in these matters to the whole kingdom collectively. The same must be said concerning the pope in relation to the Church. These arguments have little power to imply that it is an intolerable error to say that the council is superior to the pope. Indeed, the opposite is an error destructive of the whole Church and most pernicious to it, Christ's bride. Nor does it follow that, as [Tommaso] de Vio infers, the government of the Church would be aristocratic or popular, in which all authority does not reside with one person. For a government is not called royal because there is a single person superior to all the rest [of the realm]; for if so there would be no [such thing as] a royal government in civil matters. Rather, [it is called royal] because there is a single person, superior to any other individual,

who acts on behalf of the whole people, and to whom has been given the power of exercising acts of jurisdiction (which belongs in principle to the people) on behalf of the people, which ordinarily cannot be assembled together. All this is quite clear from what was said previously.

By these things the confirmation of the second argument, that the Church, as distinct from the pope, is the fold and [not] Christ's sheep, can be answered easily, for *Feed My sheep* [John 21:17] was said to Peter, not "your sheep." The power to bind any member to ecclesiastical law, which, because it cannot usually be exercised by the whole [body], Christ conferred on one person on behalf of the whole, was given by Christ to that fold, leaving the Church an example according to which it should act thereafter, and he can be called the shepherd of all the rest in the aforesaid way.

To the third argument, concerning an individual bishop, the answer is: although it may be granted that an individual bishop is superior to his whole diocese in ecclesiastical power, [the same thing] cannot be inferred from this concerning the universal bishop. The reason is because an individual bishop acts on behalf not only of his diocese in relationship to the people entrusted to him, but also of the whole universal Church in relationship to the [same] people; otherwise he could not simply excommunicate someone, as Scotus rightly argued.⁷⁷ Second, an individual church, which any diocesan bishop rules, has a superior on earth common to it and him [- namely, the universal Church]. Therefore, it is conceded rightly that the pope is superior to the individual diocese entrusted to him, which is distinct from him [as bishop].⁷⁸

The answer to the fourth argument is, first: when it is said that the pope has supreme power in the Church, as many individual texts proclaim, the pope is being compared only to some other particular person, such as some other patriarch, primate, archbishop and bishop, but not to the whole collective body or the council immediately representing it, whose minister he is, just as when it is said that a king has supreme power in his kingdom. Second, as far as what is inferred, that there would be two supreme powers in

⁷⁷ *In IV Sent.* D. 19 q. un.: *Opera* (Paris), vol. 18, pp. 641-4.

⁷⁸ Richer, followed by Du Pin, added the words *ut papa* at this point, but this seems to misrepresent the point of Almain's argument.

God's Church, as Carlier⁷⁹ says, there are not different powers in the Church, in the council and in the pope, but there is the same plenitude of power. For there cannot be two plenitudes; and this is reasonable, for where one thing exists on account of another there is only one, according to Aristotle's rule in the *Topics*.⁸⁰ The supreme pontiff's power exists on account of the Church, according to *Take heed to yourselves, and to the whole flock, wherein [the Holy Ghost] placed you [bishops], to rule the Church* etc. [Acts 20:28]. Therefore, there is one power there as in a king and a kingdom, although in the Church that power extends to an act to which it does not extend in the pope, namely, to the election and deposition of the supreme pontiff, as will be made clear below. In the same way, according to Saint Thomas,⁸¹ the same priestly power subsists in a simple priest as in a bishop, and yet it extends in a bishop to certain acts, such as confirming and ordaining, to which it does not extend in a simple priest. Consequently, all texts which say that the plenitude of power is in the supreme pontiff must be glossed [to the effect] that this is true [of him] as the minister of God and of the Church, [and only] as regards particular matters, not as regards all things.

The answer to the fifth argument is that there are several ways of understanding that the pope is Christ's nearest, immediate vicar. In one sense, he is immediately from Christ without any human act or the consent of subjects in themselves or in those acting on their behalf; and in this sense it is certain that no one but Peter was Christ's immediate vicar in respect of spiritual power. In another sense, he is Christ's immediate vicar in respect of the exercise of power instituted immediately by Christ, when He dwelt visibly among men, and conferred on the Church; and in this sense it must be granted that every supreme pontiff is Christ's immediate vicar, just as individual kings, according to Paul's saying (cf. Rom. 13:4), are God's ministers for the punishment of malefactors, not in the sense that they received that [power] in the first way, immediately from God, but because they have, by the consent of the people, the exercise of the power which God gave the people. Because this analogy with the people is adduced frequently, it is proved again

⁷⁹ *Tractatus de auctoritate conciliorum generalium, et qualiter se habent inter se auctoritates eorum et summi pontificis*, prop. 2, Vat. lat. 4133

⁸⁰ *Topics*, III, 2

⁸¹ *In IV Sent.* D. 24 q. 3 a. 2 qa. 3 sol. 2 *Opera* (Parma), vol. 7, pt. 2, pp. 901-2.

that this civil jurisdiction subsists in the people itself. For in the lands immediately subject to the supreme pontiff, where he recognizes no superior in regard to temporal matters, governors or judges licitly handle capital cases, and not by their own authority, nor by the authority of any lay prince (since no one now has jurisdiction over that people), not even by the authority which is in the supreme pontiff as such – far be it [from us to say] that there should be in the supreme pontiff as such (to whom the Lord forbade the use of the material sword [cf. Matt. 26:52]) the power to kill. The authority, therefore, belongs to the people as such.

As for the confirmation from the authority of Saint Thomas,⁸² it matters little to us, since what he said, taken too literally, has been the occasion of error on the part of many zealous supporters of his teaching

The answer to the sixth argument is, first, that all the texts which are cited readily are those of supreme pontiffs, who (extending their fringes too much, as is common) attribute to themselves what belongs to the Church. Nevertheless, to the first citation, from c. *Significasti* [X 1.6.4], the answer is that this must be understood of the text related to the fact that general councils cannot ordinarily be assembled legitimately otherwise than by the pope's summons, authority for which is found throughout D. 17. But once general councils are assembled, by the pope's authority or otherwise, then they do not have their authority from the pope but immediately from Christ; and the supreme pontiff is subject to that power, as ministering servant to mistress.

The answer to the authority from c. *[Ita] dominus* [D. 19 c. 7], is that, although the power of jurisdiction was given to blessed Peter, nevertheless, it was given to him as the minister of Christ and of the Church, represented by the council, considering that in that transfer Peter signified the Church, as was cited from Augustine [C. 24 q. 1 c. 6]; and so it was given to him subject to the condition that Peter and his successors, as the Church's ministers, should be subject to it.

The answer some give to the authority of c. *Nemo* [C. 9 q. 3 c. 13] is, first, that it must be understood in regard to hidden sins, not just in regard to those things which cannot be proved judicially

⁸² See above n. 82.

(namely, by two or three witnesses) but which do not scandalize and disturb the Church; and this seems sufficiently conformable to the text. "No one will judge the first see when it desires justice temperately" is said conformably to the apostle's, *The law is not made for the just man* [1 Tim. 1:9]. But it is otherwise when he scandalizes the Church notoriously, according to the gloss to c. *Si papa* [D. 40 c. 6]. This also was the procedure adopted against John XXIII in the Council of Constance.

The answer to the other chapters in the same cause and question, such as c. *Ahorum* [C. 9 q. 3 c. 14] and c. *Facta* [C. 9 q. 3 c. 15], is the same. The sins of subjects, [however], even if they do not cause scandal, if they can be proved juridically, are judged as a matter of course. It could be said, second, that this must be understood as referring to ordinary procedures, since recourse ordinarily could not be had to the supreme pontiff's superior; or else the words, "by all the clergy," are not understood collectively but distributively. Or again it may be said, as others wish, that it refers to the college of cardinals.

So from these points the removal of all the foundations of that most pernicious opinion, which enervates every means by which the Church may be reformed, in view of the evil now prevailing, will be quite obvious.

Chapter ix

In which the question arises: In whom is the primary power to elect the supreme pontiff?

Having considered the superiority of the Church or the council representing it, in relationship to the pope, we must come down now to specific acts of that power. First, there is the question in whom is the primary power to elect the pope, and the aforesaid Brother Tommaso de Vio says of it in Chapters vi and xii that it is in the supreme pontiff. To combat him we suppose that we are not inquiring here concerning the primary power absolutely to elect or constitute a pope or to confer ecclesiastical power on an individual person, since it is known that this belongs to God alone; but we are speaking of the primary power to confer [it] under God, indeed under Christ, according to His humanity, according to which Christ

is superior to the whole Church, to the whole world. It is said of this power that it belongs to the Church, and not to the supreme pontiff.

The first proof is that primary power is either in the Church or in the supreme pontiff, since no one says that the cardinals receive that power immediately from Christ; but it is not in the supreme pontiff; therefore, it is in the Church. The minor is proved, because, if that power to elect a successor or to ordain by whom and how he should be elected were in the supreme pontiff alone, it follows, since the supreme pontiff is a man capable of sin, just like other men, and of being ensnared by bad actions, negligence, malice and wantonness, he could leave the whole Christian Church without the power to elect a supreme pontiff, for he could deprive the cardinals of that power, since they have it from him alone, and, after that, whether from neglect, malicious delay or lack of sufficient time, he might die before he had made any rule concerning the supreme pontiff's electors. So the whole of Christendom could remain without the power to elect a supreme pontiff. William of Ockham⁸¹ touches on this argument. If it is said, just as the same brother seems to say, that in this case that power would devolve to the Church, then it is argued: no power ever devolves to another on account of someone's negligence unless that other is simply and absolutely superior. Papal power does not devolve to a bishop on account of his negligence; but a bishop's power to provide to a vacant benefice devolves on account of his negligence to the supreme pontiff. Furthermore, if the Church has that power in this case, the question arises from whom it has it immediately, since it cannot have it from itself; and, if it is said, from Christ, it would be difficult to find in holy Writ a foundation on which it could be established that it has it in this case, but not ordinarily.

Second, it is not likely that Christ would have entrusted the authority of the supreme pontiff to one man's will, since his charity easily could grow so cold that he might put his own flesh and blood in his place and, perhaps, one who was a false prophet; and so one of his progeny could say, *Let us possess the sanctuary of God for an*

⁸¹ *Dialogus*, pt. 3, tr. 2, l. 3, c. 5; *Opera plurima*, 4 vols (Lyons, 1494-6; Farnborough, 1962), fol. CCLXXth.

inheritance [Ps. 82:13 (83:12)]. Any pontiff, when he saw the end of his days coming, might strive to put one of his blood kin in his place. The bishop of Armagh⁸⁴ touches on this.

Third, if the primary power to constitute a pope and make rules concerning his electors belonged to the supreme pontiff, in the same way the primary power to deprive the supreme pontiff in a case in which he could be deprived, as in a case of heresy, even according to our adversary, would belong to the supreme pontiff; and thus equal would have power over equal, and the supreme pontiff could ordain that a supreme pontiff could be deprived by only two or three persons in a case of heresy. The consequent is proved, because those powers must be created and destroyed by the same causes.

Fourth, there is an argument that, if the power to elect a successor belonged to the supreme pontiff, then either the power to elect a successor belongs to him so that he can elect a successor by himself or only in as much as he can communicate that power to others. The second has no appearance of truth. If the first be said, then by the mere fact that the supreme pontiff wishes another to succeed him and the other is willing to accept, that other is made supreme pontiff. If this were conceded, the unacceptable consequence would follow that it would be in the power of two persons to arrange that each shall be supreme pontiff for a year, turn and turn about, like Annas and Caiphas. The consequent is obvious, because supreme pontiff A. can appoint B. as supreme pontiff by his own will, and, in turn, at the year's end, B. could appoint A. once more, and so on.

Fifth, there is an argument that Christ did not confer on the supreme pontiff any power pernicious to the Church; but, as the gloss says,⁸⁵ it is pernicious that anyone should elect his successor. Therefore, Christ did not confer that power on the supreme pontiff; and, therefore, William of Ockham⁸⁶ says that no power was granted to the supreme pontiff which ordinarily would be committed to one person with pernicious results. For this proposition, it seems that it was the primitive Church's usage, for parish priests were chosen by the people, as in c. *Qui in aliquo* [D. 51 c. 5]; and bishops, by the clergy and people, as in c. *Nulla ratio* [D. 62 c. 1]. The supreme

⁸⁴ Richard Fitz Ralph, *Summa questionum Armeniorum*, I 7, c. 19.

⁸⁵ *Ordinary Gloss* to C. 8 q. 1 c. 1.

⁸⁶ See above n. 94.

pontiff was chosen by the cardinal bishops, the other cardinal clergy and the whole clergy, and by the acclamations of the people, as in c. *In nomine Domini* [D. 23 c. 1 ¶ 2].

But our adversary argues against this, first, from the case of Peter, for he elected his successor; therefore, any other supreme pontiff can do so. The consequent holds, because any supreme pontiff succeeds Peter in the same power. The antecedent is proved by c. *Si Petrus* [C. 8 q. 1 c. 1], where we read, "If Peter, prince of the apostles, adopted for himself helpers, Linus and Cletus, nevertheless, he did not give them the power of the pontificate or the authority to bind or loose; but he promoted as his successor Clement, who held the apostolic see after him, passing it on to him."

Second, there is an argument that it belongs to the Roman pontiff to regulate the exercise of the elective power by determining when and how the election should be carried out and by determining who should have that power, since he established that the election should belong to at least two thirds of the cardinals. Nor can the whole Church, apart from the supreme pontiff, change that law.

The answer to the first of these points is, first, according to the bishop of Armagh,⁸⁷ that Peter did not ordain Clement but nominated him for ordination, making clear to the brethren what he thought concerning his successor, for, although filled with the Holy Spirit, he did not wish to substitute Matthias in Judas' place without the consent of the brethren [cf. Acts 1:15-26]. Also, we must believe that he would not have done this concerning Clement unless he had received the Lord's prompting for it. For this reason, it could be said, second, that he did this with the inspiration of the Holy Spirit, by which he even foresaw his own death. William of Ockham⁸⁸ expresses another view: that in a case in which it is unlikely that the subjects who elect their superior can be assembled, when the pope's death is impending, and it is necessary that a new pope be appointed quickly to deal with some imminent peril, then the supreme pontiff could appoint a successor by reason of necessity, lest God should seem not to have provided adequately for His Church. The archdeacon of Bologna⁸⁹ is of the same opinion at the

⁸⁷ See above n. 95.

⁸⁸ *Dialogus*, pt. 3, tr. 1, c. 17: *Opera plurima*, vol. 1, fol. CLXXXIX^r.

⁸⁹ Guido de Baysio, *Rosarium super decreto* (Strasbourg, 1473), [unpaginated] ad C. 8 q. 1 c. 1, citing C. 25 q. 1 c. 1.

same canon; and he cites in favor of this view the first canon of C. 31 q. 1, where we read, "On account of necessity it was decided that brother would marry sister, but, when the necessity ceased, this permission ceased."

The answer to the second point is that the pope did not give the cardinals the power to elect his successor; they have this, rather, from the Church or from the council representing it. This is obvious from the sixth synod in c. *In nomine Domini* [D. 23 c. 1 ¶ 2], where Pope Nicholas [II] decreed and ordained, not by his own authority but by that of the holy fathers, concerning the way of electing supreme pontiffs. From what has been said it is obvious that, if all the cardinals were dead, were unwilling to elect, or could not do so, it would be for the corporation of the faithful to elect or appoint electors. It belongs to that [corporation] alone to judge whether the appointment made by the cardinals is adequate. Second, it would follow that, where the cardinals manifestly abused the power given to them, this corporation could deprive them of it, and also commit it to others. In my judgment, the opposite opinion is a most pernicious error.

Chapter x

In which the question arises to whom the ultimate decision concerning those things which are of the faith belongs; and it is demonstrated that the pope, not the council, can err

We need to investigate whether the final decision and determination of those things which are of the faith belongs to the pope or to the Church, or to the council representing it. Here we are not speaking of a doctrinal decision or determination, which is recognized as belonging to any knowledgeable expert, but of an authoritative and judicial one. In regard to this, the aforesaid Brother Tommaso de Vio says that the ultimate resolution of those things which are of the faith belongs to the supreme pontiff, basing his view on a statement by Saint Thomas.⁹⁰ Furthermore, he says that the supreme pontiff, although he can err in believing in his personal capacity,

⁹⁰ II^a II^a q. 1 a. 10. *Opera* (Parma), vol. 3, p. 9

nevertheless cannot err in faith in his judicial capacity. The reason for this is that the pope's error would be that of the whole Church, because it belongs to him to determine finally concerning the faith, what must be held, what rejected, so that it may be held by all with unshaken faith, as Saint Thomas says.⁹¹ Wherefore, Christ also said to Peter, *I have prayed for thee, that thy faith fail not: and thou, being once converted, confirm thy brothers* [Luke 22:32]. The same view also is expressed by Pope Innocent [I] in c. *Quotiens* [C. 24 q. 1 c. 12], "Whenever a matter of faith is brought forward, recourse must be had only to Peter, that is, to the one having the honor and authority of his name." He deduces this opinion of his in Chapters IX and XI.

The following is asserted against that proposition: the pope can err in his judicial capacity – the point concerning his personal error is known to everyone. This proposition is proved: two supreme pontiffs have reached contrary decisions in those things which touch on the faith; therefore, one of them erred in his judicial capacity. The antecedent is obvious from John XXII and Nicholas III, one of whom determined judicially that Christ and the apostles possessed nothing in common nor of their own, the other, the opposite, as is seen in their additional constitutions [cf. VI 5.12.3; Extrav. Ioan. XXII 14.3].

Second, Innocent III and Celestine [III] reached contrary decisions concerning this proposition, "When one spouse has gone over to heresy, the other, who remains in the faith, can proceed to a second marriage." Innocent's decision that one cannot [do this] is found in c. *Quanto* [X 4.19.7]; Celestine's decision, as the [ordinary] gloss says at the same chapter, once was found among the decretals at the end of *De conversione coniugatorum* [X 3.32].⁹²

Third, some have issued decrees contrary to the gospel, such as Pelagius [II], who issued a constitution that all the subdeacons in Sicily should abstain from their wives, whom they had married while in minor orders, or relinquish their office, which, because it was iniquitous and against the gospel, Gregory I, his successor,

⁹¹ *Contra errores Graecorum*, pars altera, c. 34: *Opera* (Rome), vol. 404, p. 102.

⁹² Almain seems to have confused Celestine's decretal *Laudabilem* [X 3.33.1], which was the last chapter in *De conversione infidelium* in *Compilatio II*, with one of his pronouncements on spouses who wish to join monasteries [X 3.32.10–12]; see *Quinque compilationes antiquae*, ed. E. Friedberg (Leipzig, 1882; Graz, 1956), p. 87.

withdrew, as is obvious from the text and gloss of c. *Ante triennium* [D. 31 c. 1]. If he could issue a juridical decree contrary to the gospel, [he could] so define.

Fourth, there is an argument that, if the supreme pontiff cannot err in his judicial capacity in those things which are of the faith, it follows that the supreme pontiff cannot become a heretic in regard to propositions not yet determined and to belief in something to which no one is bound explicitly, such as was the article concerning the [Immaculate] Conception before the determination,⁹³ and concerning the procession of the Holy Spirit from the Son [cf. x l. 1. 1]. The consequent is obvious, because he cannot be pertinacious, since pertinacity is nothing other than refusing to believe although it is determined; for the supreme pontiff, although he determined [the point], would not have the intention of refusing to believe. Similarly, it follows from the proposition that a determination by the supreme pontiff alone would bind his successor. Similarly, if the supreme pontiff is a heretic and the final decision concerning those things which are of the faith pertains to him alone, how can he be judged to be a heretic? He will decide that everything cited against him is to be understood in some sense not opposed to his assertion. Greater faith would have to be given to his decision concerning an adversary than to a determination by all the rest of the Church. It would be strange if the Holy Spirit were to assist a heretic so as to prevent him from judging and determining to be true the things to which he assents – or even to compel [him] to judge the opposite. Nor is it valid to say that he cannot err when he consults a council and seeks the aid of the universal Church; but He could well err as an individual person, as [Liberius] did, whom Hilary opposed, as someone says.⁹⁴ For this is nothing other than to say that the Church or the council cannot err, and the aforesaid brother not only errs but contradicts himself! He says in Chapter iv that the decree of John the evangelist would have prevailed over that of Pope Clement in the teaching of the faith. If Clement could not err in decreeing, nor could any supreme pontiff, according to Christ's promise, *The [Holy] Spirit... will teach you all truth* [John 16:13],

⁹³ The Council of Basel defined this doctrine after its break with Eugenius IV; see Mansi 29:182–3.

⁹⁴ Cf. Juan de Torquemada, *Summa de ecclesia* (Venice, 1561), fols. 246^r–248^r; n, c. 106. Richer and Du Pin have corrected the reference to Leo in the 1512 edition.

and His prayer, in which He prayed for Peter lest his faith fail [cf. Luke 22 32], it would have been necessary to abide by the decree of Clement as much as by John's; even more so, indeed, since the making of the final decision concerning the faith would have belonged to Clement (according to what [our opponent] said) as much as it would have belonged to Peter if he had been still alive.

From these points it is sufficiently obvious that the supreme pontiff can err in decreeing about a matter of faith. If he could not have erred, the four principal general councils against the four heresiarchs, those of Nicaea, Constantinople, Ephesus and Chalcedon, would have been convoked in vain. The pope's decision alone would have sufficed. Indeed, according to [our] adversary, the pope has as much power in defining alone as he does when conjoined with the rest [of the Church].

Other things that have been decided by supreme pontiffs are cited by William of Ockham,⁹⁵ which, he strives to show, smack of heresy. The first is what is held in c. *Per venerabilem* [x 4.17.13], where we read, "Since Deuteronomy means second law, it is proved by force of the word that what is decreed there ought to be observed in the New Testament" etc. If Innocent III understands by these words that these laws are to be observed in the literal sense, in the same way as in the Old Testament, then this is erroneous in many instances, because there are many [purely] ceremonial things there, as is obvious from Chapters XIII and XIV. If, however, his meaning is that these must be observed in a mystical and moral sense, then not only should those [laws] which are in Deuteronomy be observed but even those [laws] which are decreed in the other books of Moses, as is said in c. *His itaque* [D. 6 p. c. 3]. That doctor cites many other instances, as you can see from Chapter XI of the afore-said question;⁹⁶ and one among the others is extraordinary. Some supreme pontiffs are found to have defined that they themselves have supreme power in temporal matters; others, however, defined the opposite. From these things it follows as a corollary that it is not necessary to believe what was defined by the supreme pontiffs, although the opposite is not to be taught publicly, unless it is a clear case of falsehood, as Jean Gerson says.⁹⁷

⁹⁵ *Octo quaestiones de potestate papae*, q. 1 c. 9. *Opera politica*, ed. H. S. Offer, vol. 1 (Manchester, 1974), pp. 39-41.

⁹⁶ *Octo quaestiones*, q. 1 c. 11: *ibid.*, pp. 45-8.

⁹⁷ *De potestate ecclesiastica*, Consideration 12: OC 6 237-8.

although the opposite is not to be taught publicly, unless it is a clear case of falsehood, as Jean Gerson says.⁹⁷

It follows, second, that the final decision in those things which are of the faith does not belong to the supreme pontiff. It is not likely that God committed the final decision to a man able to err in those things which are of the faith.

It follows, third, that Christ prayed not for Peter's person alone, or for his successors, lest his faith fail, but for the universal Church represented by Peter.

It is quite consistent with all that has been said that, if the supreme pontiff should do what is in him to determine rightly, God would not permit him to err. Indeed, [William of] Auxerre⁹⁸ says this of the old woman, that God never would permit her to err personally in those things which are of the faith, if she does what is in her. But the supreme pontiff can decree that something is of the faith without doing what is in him to decree correctly.

As for the argument in which it is inferred that the supreme pontiff cannot err in defining, because his error would belong to the universal Church, the consequent is not valid;⁹⁹ for in that case the Church is not bound to assent to the supreme pontiff's determination, just as it is not bound to comply when he commands anything against the gospel. As for the text of Saint Thomas,¹⁰⁰ it is not to be esteemed of great force. To c. *Maiores* [x 3.42.3], in which we read, "The Church's greater cases, especially those touching on the articles of faith, must be referred to the see of Peter" etc., is said, I say that it is true ordinarily, because the Church is not assembled ordinarily, but not for the decision of what is ultimate and necessarily to be believed. Or they must be referred to the supreme pontiff so that he might summon a council, because it belongs to him to summon one ordinarily, to which final judgment belongs.

Second proposition: the universal council cannot err in those things which are of the faith, and so the final decision concerning

⁹⁷ *De potestate ecclesiastica*, Consideration 12 OC 6 237-8

⁹⁸ *Summa aurea in quattuor libros Sententiarum* (Paris, 1500, Frankfurt, 1964), fols 135^v-136^r.

⁹⁹ This passage, garbled in the 1512 edition, was corrected by Richer, followed by Du Pin.

¹⁰⁰ *Quaestiones quodlibetales* (Paris, 1926), pp 370-1 Quodl 9 a. 16.

the faith belongs to it. That it cannot err in those things which are of the faith is obvious, because it is especially directed by the Holy Spirit, which, according to Christ's promise, teaches all truth. Wherefore, at the conclusion of the council of the apostles, the apostles said, *It hath seemed good to the Holy Ghost and to us* [Acts 15:28], placing the Holy Spirit first as the council's president and special director; and they did not say, "It seemed to Peter and to us." Augustine¹⁰¹ seems to have indicated this conclusion sufficiently when he said, "I would not believe the gospel unless the Church's authority compelled me to do so." One would not be bound to believe John's gospel more than Gamaliel's unless because the Church received the former and not the latter. Therefore, also, we read in the seventh synod, as is obvious in c. *Placuit* [D. 16 c. 4], "It pleased the holy synod that henceforth the eighty-five chapters of the *Canons of the Apostles* are entirely confirmed and ratified." The disputation in the gloss seems to be about what it should understand by these [eighty-five] chapters. We can deduce this infallibility in the faith from Christ's saying, *Behold I am with you all days, even to the consummation of the world* [Matt. 28:20]. That cannot be understood of the apostles in their own persons, since they would not live to the end of the world, but of their successors. Nor does Christ promise this to anyone in particular among the successors but to the collective body; for the general council truly represents the council of the apostles and the elders. This conclusion is obvious from another point, for every Christian professes his belief in one holy catholic Church;¹⁰² and so the final decision concerning those things which are of the faith will belong to [the Church]. When the pope professes his belief in one holy Church, he does not mean that he should believe in himself. So such assistance of the Holy Spirit is believed [to be] in the general council, that it not only decrees infallibly concerning the faith; but also some persons assisting in the council confessed frankly and in writing that the council is superior to the supreme pontiff. When the council had been dissolved, however, because the spirit of truth did not assist them any longer, they fell into the opposite error, as is obvious

¹⁰¹ *Contra epistolam Manichaei*, v: PL 42.176. Almain has substituted *cogeret* for Augustine's *moneret*, which Cajetan had quoted more correctly as *admoneret* (see p. 16).

¹⁰² *Nicene Creed*.

of Panormitanus in his two tracts, one of which he composed at the Council of Basel and the other, after the council. The first is entitled, *De potestate concilii et papae*; the second, *De depositione Eugeni*.¹⁰³

But against this Panormitanus argues at c. *Significasti*,¹⁰⁴ where he asserts that it is only the universal Church which cannot err, and not the council; and the aforesaid Brother Tommaso adopts this argument. The argument is this: the Council of Melde erred; and this is believed simply on the authority of Jerome against that council, for in the Council of Melde, as we read in c. *Placuit* [C. 36 q. 2 c. 11], "It pleased [the synod] that those who rape, abduct or seduce women may on no account have them as wives, even if afterwards they agree either to dower them or to take them in marriage with the consent of their parents." In c. *Tria* [C. 36 q. 2 c. 8] Jerome says, "Three legitimate marriages are referred to in the Scriptures. The first etc. The second, a virgin having been seized in the city by a man and forced to copulate with him, if her father wishes it, this man will dower her as far as he judges [fit] and give the price of her shame." Gratian [dictum following C. 36 q. 2 c. 11] says that the council's authority does not prevail over Jerome's, especially since it is supported by the testimony of divine law. Second, there is an argument that the Church for whose faith Christ prayed, lest it fail, is a single body, and this is not the universal council, since the council is part of it; therefore, the council can err.

The answer to the first of these is, first of all, that a rapist after the rape cannot licitly take the woman raped as wife, even if he has dowered her and the parents have consented, unless first he submits to a fitting penance. Martin¹⁰⁵ shows this very well: since such a man is excommunicated, and an excommunicate cannot receive any sacrament licitly. Second, the council, since the plenitude of ecclesiastical jurisdiction is in it, could simply invalidate such a rapist's marriage with the woman raped before a fitting penance; and Martin seems to be of the opinion that it acted thus in accordance with

¹⁰³ Almain cited, in the first instance, Panormitanus' *Quoniam veritas*, probably from the edition cited in n. 49 above; see *Deutsche Reichstagsakten*, vol. 16 (Stuttgart, 1928), pp. 440-538. The second reference is unclear.

¹⁰⁴ *Abbas Panormitanus in quinque decretalium*, vol. 1, pt. 1, fol. 131ⁿ x 1.64.

¹⁰⁵ Martinus de Magistris, *De temperantia liber* (Paris, 1511), fols. 61ⁿ-62ⁿ, q. de raptu.

c. *Si autem* [C. 36 q. 2 c. 10], where we read, "If, however, they have not yet taken those whom they have raped in marriage with the consent of the parents under the name of espousal or dowering, when this constitution has been promulgated to all, they are to be separated from their joining and subjected to public penance." As Martin says, this must be understood of rapists; and, as is immediately obvious in that text, having done public penances, rapists can be joined in marriage; and so the council seems to have disqualified them until they have done public penance. Jerome, however, speaks of the time before the council, when they were not yet disqualified persons. I know, however, that others say it is true matrimony if they contract before public penance; but this view does not seem the more probable to me. As for the authority of Gratian, who says that the council's authority does not prevail over Jerome's, I say that this statement must be numbered with the *palcae*¹⁰⁶

The answer to the second [argument is] that the general council represents the Church for whose faith Christ prayed and enjoys the same privilege as the Church it represents, just as it has entirely the same power; indeed the Church as dispersed can exercise no act of jurisdiction nor define anything formally – so infallibility in defining must belong to it as assembled in a council. If someone says that the pope represents the Church, just as the council does, [the answer is] (as frequently has been stated above) that the keys were given to him as representing the Church. Nicholas of Cusa¹⁰⁷ says of this that the pope represents [the Church] remotely, the council, most nearly, since in it, if it is universal, there should be someone from every individual church, who acts on its behalf, or at least [a representative] should have been duly summoned. The Church's privilege passes immediately to the council representing it, but not to the supreme pontiff; and in this matter, concerning the council's infallibility in those things which are of the faith, William of Ockham¹⁰⁸ is widely followed. Marsilius of Padua, Nicholas of Cusa and many other doctors, who wrote most learnedly, were of this opinion.

¹⁰⁶ The additions to the *Decretum*, which were regarded as less authoritative.

¹⁰⁷ *De concordantia catholica*, II, xviii, 158 *Opera*, vol. 14, pt. 2, p. 194.

¹⁰⁸ *Dialogus*, pt. 1, lib. 5, c. 27, ratio 8 *Opera plurima*, vol. 1, fol. XLVII^b. Ockham's actual opposition to conciliar infallibility based on this argument is found most clearly in *Dialogus*, pt. 3, tr. 1, lib. 3, c. 9: *ibid.*, fol. CCX^a.

Concerning an error of fact – a fact, however, which cannot be drawn from holy Writ, there is no one who doubts that a council can err; nor is it enlightened by the Holy Spirit with His special assistance except in what is necessary; and it follows from this that it is not necessary that every definitive decision of a council be true. Some of its decisions deal with matters of fact, for instance, that this man is pope or is not pope, this woman is or is not that man's wife; and, although the decision may be false, nevertheless, [the council] decides rightly and justly, because it acts according to the evidence and proofs.

From these points it follows manifestly that the pope can err, not only in his personal capacity but also in his judicial capacity in a matter of faith, just as in other matters. It is surprising that our adversaries do not declare him to be unable to sin; and I believe that they would say so were it not that the supreme pontiff's everyday conduct compels them to believe the opposite.

Chapter xi

In which it is inquired concerning the council's superiority with respect to the supreme pontiff

Since it is obvious from what has been said above that the Church, and the council, is absolutely superior to the supreme pontiff in jurisdiction, in the power to confer the power of the papacy on a certain person, and in the power to define those things which are of the faith, and since one act of superior jurisdiction is that of deposing one appointed to an inferior [position] from the power in which he is inferior, we must inquire next whether the council can depose the supreme pontiff, and first, in a case of heresy.

On this point the aforesaid Brother Tommaso de Vio has a number of opinions.

The first is: the supreme pontiff, having become a heretic, is not deposed *ipso facto*, as is obvious from Chapter ix of his book. The basis of his view is that he is not deposed *ipso facto* by divine law. There is no divine law concerning an automatic sentence of excommunication or deposition, although a sentence of excommunication certainly can be imposed, as William of Ockham¹⁰⁹ deduces.

¹⁰⁹ *Dialogus*, pt. 1, lib. 6, c. 81: *Opera plurima*, vol. 1, fol. xvc⁶.

According to the same brother, the following argument is valid: he is not excommunicated *ipso facto*; therefore, he is not deposed *ipso facto*, because more is required to incur deprivation *ipso facto* than to incur excommunication, since incurring censure does not require a declaration, as incurring deprivation does, according to the jurists. Consequently he holds that no jurisdiction is lost by covert heresy. In this he agrees with Jean Gerson, and I am with him in this same opinion. Besides the texts and arguments which he cites to prove this I will add some to prove that infused faith is not required by divine law for a man to be capable of ecclesiastical jurisdiction. For a man who, when he is baptized, places an obstacle in the way of grace by mortal sin – not a sin of unbelief but some other [sin] – receives no virtue infused by God, as can be deduced sufficiently from what the doctors say concerning the connection of those theological virtues in regard to infusion, and especially from Scotus around the end of the third [book].¹¹⁰ Similarly, if a heretic ceases to be a heretic by dissenting from the heresy, but does not repent past sin (dissent from a heretical proposition does not of necessity imply contrition for past sin), infused faith is not infused into him, because, whom God heals, he heals perfectly; but, nevertheless, no one would say that such men are not capable of ecclesiastical jurisdiction, if they are elected, since none of them is a heretic. Second, that same motive can be adduced by which the holy fathers were moved to condemn the heresy of those who said that this power is founded by divine law on charity, because then all certitude of status or hierarchic order would perish. No one can know of another whether he is in charity; and so it cannot be known when he has faith or that he is not a heretic with a covert heresy. I fully admit that this argument is not effective in proving the proposition clearly. It is certain that it cannot be known of anyone certainly, with the certitude of evidence, that he has this power, nor that he has been baptized, since the minister's intention is required for baptism, concerning which he alone among mortal men has evidence.

Second, he says that a heretical supreme pontiff should be deposed. This is manifestly obvious from c. *Si papa* [D. 40 c. 6] and many canons of C. 24 q. 1.¹¹¹ Individual doctors agree on this, that he should be deposed or is deposed [*ipso facto*].

¹¹⁰ In *III Sent.* D. 25 q. 2: *Opera* (Paris), vol. 15, p. 211.

¹¹¹ See especially C. 24 q. 1 cc. 1, 6, 9 and 14.

Third, he says that [such a pope] must be deposed by a council not by any authoritative power which it has over the pope but by the ministerial power which it has over him, as is obvious from Chapters xx and xxii. He posits that the Church's power relative to the pope is ministerial; it is authoritative relative to making or dissolving the conjunction of Peter and the papacy, there being a person suitably disposed, so that a definitive sentence proceeding from this authority over the conjunction of this person, the heretic Peter, and the papacy authoritatively dissolves that conjunction, just as the Church's election authoritatively makes the conjunction between a non-pope, Peter, [suitably] disposed (that is, faithful and willing), and the papacy. As evidence of this he notes that three things are found in the pope, the papacy, the person who is pope, say Peter, and the conjunction of the two, the papacy and Peter. From this conjunction results Pope Peter. The papacy is immediately from God; Peter is from his father; however, the conjunction of the papacy with Peter, after the first Peter was instituted immediately by Christ, is not from God but from man, as is obvious, because this is by men's election. A double human consent concurs to cause this power, that of the electors and that of the one elected. These things you may see at length in his Chapters xix, xxi and xxii, which are not just false but are manifestly repugnant to one another and to other earlier chapters.

First: his statement that there is in the Church an authoritative power over the conjunction of the papacy and Peter is repugnant to what he says in Chapters xiii and vi, previously impugned, that the power to elect the pope or confer ecclesiastical power on this or that person belongs to the pope alone.

Second: the following two things are repugnant, that there is an authoritative power in the Church over the conjunction of the papacy and Peter, and similarly over its dissolution, but not over the pope, which is manifestly shown by the example used, turning it back against him; for having authoritative power over a man is not having authoritative power over the soul, nor over the body, but only over the separation of soul from body, since someone who kills a man authoritatively does nothing else. What else, therefore, could having authoritative power over the pope be but to be able to separate the papacy from him authoritatively?

Third: if the Church, or the council representing it, does not have authoritative power over the pope, then a pope cited by a council will not be bound to comply; nor can he be deemed contumacious for not complying. What then will they be judging – a person neither heard nor obliged to respond? The apostle's words, *Who art thou that judgest another man's servant?* [Rom. 14:4], may well be addressed to them.

Fourth: every punitive act justly inflicted on some person by reason of sin is [the act] of one who has authoritative power over the one who is punished or of [someone to whom that power] has been entrusted by its possessor; therefore, since that separation is an act punishing the pope, it is [the act] of one who has authoritative power over him or has been entrusted with it by the one who has it. If you say that it is [done] by the Church, which is entrusted [with it] by God, Who has authoritative power over the pope, I will say in the same way that the pope's power over any individual is only ministerial, and not authoritative.

Fifth: the Church can excommunicate a heretical pope before it deposes him, as is obvious from his first statement. He says that the following argument is valid: he is not excommunicated *ipso facto*; therefore, he is not deposed. This, therefore, will be valid [too]: he cannot excommunicate; therefore, he cannot depose. And this: he can depose; therefore, he can excommunicate. It is certain that excommunication is an act of one having authoritative power over the excommunicate. If he grants that a council could excommunicate the pope, how will he maintain that there is in a council, apart from the pope, no power of jurisdiction?

Furthermore, he says that the pope can entrust that ministerial power over a heretical pope to other persons, such as the lord cardinals; and he could not at the same time avoid [the conclusion] that equal would have power over equal; and so what the gloss says at c. *Achatius* [C. 24 q. 1 c. 1] would be true, "This is a case in which pope can bind pope." A pope fallen into heresy could take away that ministerial power from the cardinals and would not be bound to submit to their ministerial judgment. And, in my opinion, it was with God's special concurrence that he put forward such manifestly self-contradictory arguments, so that the falsity of his doctrine would thus be made clear to everyone. This is characteristic of false

witnesses. Augustine¹¹² says that from their words or some signs they always can be convicted. This he proved from the case of the soldiers who were assigned to guard Christ's sepulcher. They said, *His disciples [came by night, and stole him away] when we were asleep* etc. [Matt. 28:13]. If they were asleep, how did they know that [the disciples] had come?

Therefore, the following propositions are true. First: a heretical pope with only a covert heresy is not deposed *ipso facto*, and a heretic with an overt heresy is not deposed *ipso facto* by divine law. As to whether, however, he is deposed *ipso facto* by human law, not papal but that of the councils – for they can make statutes imposing an automatic sentence of deposition, just as [Godfrey] of Fontaines¹¹³ says, so that whoever within a year after having obtained a benefice is not promoted [to holy orders] loses [his] title [to it] *ipso facto* – it is not entirely improbable to say that this is true; the opposite, nevertheless, is more probable to me. Second proposition: he should be deposed by a council having authoritative power over him, and not just over the conjunction, once summoned by which he is bound to comply, and also to respond to interrogation; and the pope can entrust this authoritative power to no one [else], since equal has no power over equal. It must be granted fully, nevertheless, with Tommaso de Vio that the council has no power over the papacy considered in itself. Gerson posits this in his tract *De ecclesiastica potestate*,¹¹⁴ and enough has been said concerning this in Chapter II.

Chapter XII

In which it is inquired whether the supreme pontiff can be deposed in cases other than that of heresy

We must see, next, whether the supreme pontiff can be punished with deposition on account of a crime other than heresy. About that matter, the aforesaid Brother Tommaso in Chapter XXV inclusively up to the end maintains that [he can]not. One of his foundations

¹¹² *Enarrationes in psalmos I–L*, XXXV, s. ii, 17: CC 38.358–9.

¹¹³ Cf. *Les Quodlibets onze-quatorze de Godefroid de Fontaines*, ed. J. Hoffmans (Louvain, 1932), pp. 51–3: Quodl. XI q. 10.

¹¹⁴ Consideration 11: OC 6. 235.

[for this] in Chapter xxv is that the pope cannot be deposed in any case except one determined by divine law. The case of heresy is determined in many places in sacred Scripture, as is obvious from Galatians, where *Let him be anathema* [Gal. 1:8], that is, separated, is applied to a heretic, and, *withdraw yourselves* [2 Thess. 3:6], *Do not bear the yoke* [2 Cor. 6:14], *Receive him not, nor say to him, God speed you* [2 John 2:10], and, *A man that is a heretic avoid etc.* [Tit. 3:10]. The meaning of all these texts is that a heretical man must be separated and excommunicated, and no other case is excepted [from the pope's judicial immunity]. That is obvious from the Lord's pronouncement, *The scribes and the Pharisees have sitten on the chair of Moses. All things therefore whatsoever they shall say to you, observe and do; but according to their works do ye not* [Matt. 23:2], where the Lord openly established that subjects ought to hear prelates of bad life but of good doctrine. It is indeed clear that teaching is a matter of the faith; life and actions, however, [pertain] to the bad conduct of crimes other [than heresy]. It is confirmed from Peter's pronouncement, *Be subject to your masters. . . not only to the good and gentle, but also to the froward* [1 Pet. 2:18]. For fuller proof he says in Chapter xxvi that for this ecclesiastical power to be conferred upon some individual, "some dispositions are required" in that individual "of absolute necessity, some for this to be done well. The things required of absolute necessity are two, being willing and being a Christian. Never has anyone, however elected, been pope without his consent; and, similarly, he is not pope unless he is a member of Christ. The second disposition is required by divine law"; and "the first, by the law of nature. The dispositions required for" being [made] pope "well are good conduct, ecclesiastical knowledge, charity, experience in ruling and the like. Without these Peter, if he is elected and accepts, is pope, although. . . a bad one"; and, because it is easier to destroy than to construct, two things together being necessary for construction, the lack of either allows for dissolution.

From these points [our adversary] forms an argument to confirm his position as follows. "Only contraries to the conditions required of necessity for being pope render a pope deposable; but, among crimes, unbelief alone is contrary to the conditions required of necessity to be pope; therefore, unbelief alone among crimes renders the pope deposable. The first proposition is obvious from the fact

that being deposed is not to be pope, and everything continues in being if a contrary does not intervene. . . The second proposition is proved because other [vices] are contrary [only] to the conditions required for being pope well." Immediately he adds, "I wish this argument to be placed in the balance, and not frivolous. . . ones, rambling among inessentials."

But, in my judgment, if it were placed in the balance, it would be found of little weight. Faith is not required of necessity to be pope, since one who had become a heretic would still be pope according to [our adversary] himself; and, if a heretic is elected and accepts, he is made pope; but only the baptismal character, which is indelible, is required of necessity, together with consent on Peter's part. Therefore, equally strongly, his argument would prove that [the pope] could not be deposed for heresy. It is surprising that he thought this argument, which equally could prove the opposite of what was established by him in the chapters immediately preceding, as much as what was asserted, was so strong.

Moreover, just as we find in holy Writ that a heretical man must be separated or excommunicated, so we find the same in regard to other vices, *If any man that is named a brother, be a fornicator, or covetous, or a server of idols, or a raiser, or a drunkard, or an extortioner: with such a one, not so much as to eat* [1 Cor. 5:11]. Christ indicates that a man is to be excommunicated for any mortal sin if contumacy is joined to it [cf. Matt. 18:15-17]. If our adversary glosses those passages as referring to subjects having a superior, I will gloss similarly the passages cited by him concerning a heretic. In regard to what our Savior and Peter said, it is granted that [prelates], so long as they teach well and remain prelates, are to be heard.

Having shown sufficiently, therefore, that this opinion is not founded on a firm rock but upon sand, I posit this proposition: the supreme pontiff not only can be deposed by the Church or a council for heresy, he also can be judged for any notorious crime scandalizing the Church. That proposition is proved from the points made in Clement's epistle to James.¹¹⁵ He mentions that Peter said to him when he appointed him, "Nor did Christ wish you to be established

¹¹⁵ *Epistola I, ad Iacobum fratrem Domini*, in: *Decretales pseudo-Isidorianae et Capitula Anglram*, ed. P. Hinschius (Leipzig, 1863), p. 32. Almann paraphrases this text and the rest of the paragraph from Nicholas of Cusa, *De concordantia catholica*, II, xvii, 152. *Opera*, vol. 14, pt. 2, pp. 187-8.

today as a judge or advocate of secular causes, lest, choked by the present cares of men, you may not have time for God's word and distinguishing the good from the bad according to the rule of truth." And later, "If you were occupied with worldly care, you would deceive yourself and those who hear you. You could not distinguish those things which pertain to salvation more fully than other people. From this it could happen that you, as not having taught those things which pertain to salvation, could be deposed; and the disciples could perish from ignorance." From which it is manifest that a pope can be deposed even on account of negligence. Nevertheless, I do not wish to assert that Clement wrote to James in these terms, since we find that the James in question died a martyr eight years before Peter; but the Church does not spurn that epistle, and that is sufficient.

Secondly, we fling back against our adversaries an argument on which they base their position: if the Church cannot get rid of a pope ruling it to its destruction and leading souls to hell in droves by his instigation and example, it follows that a purely natural and civil polity would be better organized than the ecclesiastical polity. For a purely civil and natural polity would not be well organized if it could not bring down its king who is throwing it into disorder. Indeed a community cannot abdicate the power of bringing down and killing him as a member corrupting the whole body. Granted the opposite, indeed, the polity would seem to be despotically enslaved. When, therefore, Christ established the ecclesiastical polity for a supernatural end, more perfect in its kind than a purely natural polity, since things later in generation are prior in perfection, it follows that He left the ecclesiastical polity the power to bring down its ecclesiastical prince and king if he ruled not for its edification but its destruction. Otherwise, indeed, He would not only have established it in a worse condition than a purely civil polity, but He would have deprived the community of what is known to belong to it by natural law. Also, He would not have made the Christian community free, but rather enslaved in the strictest servitude. This is the argument which he should ponder, and not that which is of the lightest, though he reckons it as of heavy weight; and to say that, in such a case, God could have left the community no remedy other than prayer, when He could have left it another suitable – and indeed a more suitable – remedy, is simply

to say that the ecclesiastical polity was not well organized and was enslaved.

Furthermore, it is known that, apart from heresy, the supreme pontiff can be so pernicious to the commonwealth that he might come to be removed by the commonwealth by way of bodily death in virtue of the power naturally placed in it. Therefore, if he cannot be brought down in those circumstances, or if, having been brought down, he perseveres [in crime], [and yet] cannot be removed by bodily death, would it not of necessity have to be granted that Christ, in establishing the ecclesiastical polity, deprived it of a power naturally imparted to it for its peaceful preservation?

Still further, when there are two contenders for the papacy, the universal synod can deprive either of them of the power he claims for the sake of the union and peace of the Church, although true papal power may be in one of them; therefore, *a fortiori* for a crime which throws the whole Church into confusion. . . The antecedent is manifestly obvious from c. *Si duo* [D. 79 c. 8], where we read, "If two were unlawfully elected, neither of them should be received, but he who will be elected with universal consent." The gloss on c. *Si papa* [D. 40 c. 6] adopts this opinion where it says, "Certainly I believe that, if any crime of his is notorious and, therefore, scandalizes the Church, and he is incorrigible, thereupon he can be accused," for contumacy sometimes is called heresy, as in c. *Si qui presbyteri* [C. 1 q. 7 c. 1], and a contumacious man is called an infidel, as in c. *Nullus* [D. 38 c. 4].

Again, if one elected as supreme [pontiff], but not yet consecrated, should take a wife, who would dare to say that the whole ecclesiastical [state] is defaced in this way without any possible remedy?

Yet again, if some king, departing to a distant region, leaves someone as vicar general, and the latter meanwhile rules tyrannically, that vicar, as we know, can be deposed by the community; therefore, in the same way, since Christ, Who is our true king, departing from the Christian community, has left a vicar, a general minister, he can be removed by the community if he rules tyrannically.

Again, since we know from what has been said that the Church, or the council representing it, is the pope's ordinary judge in a case of heresy and has authoritative power over him in regard to bringing

[him] down, and we do not read that such an authoritative power was conferred on the Church by Christ in that case alone – indeed we do not read that any such [power] was conferred on the Church except at Matthew 18[:15–17], where it seems to have been conferred in every case of notorious sin to which contumacy is joined – [such power] seems to have been conferred. This was the primitive Church's opinion, that of the holy doctors Jerome, Ambrose and Augustine; but when cases arose concerning supreme pontiffs, in which they could be deposed, there was no lack of flatterers telling them that they could not be judged, asserting that they were not the Church's ministers but its lords. And that is surprising, since various doctors may say that any prelate is only the Church's minister in the administration of the sacraments, and not [its] lord. Hence, what necessarily is required of him is the intention of doing what the Church directs, and nothing else; and [they have] to admit this [too willy-]nilly in the exercise of jurisdiction.

If we do not read that Christ said that the head must be got rid of, but only an eye, a hand or a foot, it is true that the head must never be taken away totally, so that there never again would be any other head; but it is quite possible to remove something without which life remains in the body, which indeed brings infirmity to the body, as far as in it lies. Innumerable arguments and texts can be adduced to prove these points.

It follows, first, that the power of the supreme pontiff can be limited by the council by means of certain laws and restricted in regard to its use. If the head in the human body becomes languid or infirm, it will be permissible for the other members to bind and cauterize that member, and also to cut away part of the head, for the health of the whole body.

Second, it follows as a corollary that the general council, when the Church's welfare requires it, can bring down the supreme pontiff without any fault of his, as in the case of a true supreme pontiff in a time of schism.

Similarly, if he were imprisoned among infidels and there were no hope of his liberation, after efforts had been made to ransom him.

This is so well known from what has been said already that I do not care to fortify it with other arguments; nor is there any appearance of truth in the opposite argument concerning Peter, when he

was in chains [cf. Acts 12:5], since he had been there for a short time and hope of his liberation still existed among the faithful. If in such a case the Church could not appoint a supreme pontiff for itself, so neither could it [appoint] someone to act on behalf of the supreme pontiff. Since many things may occur which must be dealt with by the supreme pontiff, such as confirmations of archbishops and prelates immediately subject to him, there would be no way of dealing with them.

It follows, third, that the power of the universal Church, or of the universal council, over the pope simply and absolutely is no chimera, as the aforesaid doctor says, blaspheming against holy Church.

It follows, fourth, that Christ did not appoint the supreme pontiff as his vicar general in every form of power which He had according to [his] humanity, for He had the power of instituting sacraments, likewise of instituting a supreme pontiff, likewise of making a new article [of faith], [likewise power] over infidels and over the whole Church categorically; and the supreme pontiff has none of these.

It follows, fifth, that the supreme pontiff is the universal Church's vicar and minister, although he may be called God's vicar and minister, just as a lay prince, who is called by the apostle Paul God's minister [cf. Rom. 13:4], is, nevertheless, the community's minister. But the supreme pontiff is called God's minister and vicar more especially, because he ministers [in the Church] by means of a power which is not natural in a community, but entirely positive and only by God's appointment; nevertheless, that power was conferred on the community.

It follows, conformably to John, patriarch of Antioch,¹¹⁶ and likewise Nicholas of Cusa,¹¹⁷ in their tracts on this subject, that the general council is superior to the supreme pontiff in each and every respect. These things I have set down briefly and in a summary fashion, intending to write a fuller treatise concerning every ecclesiastical and lay power and their several acts.

As to whether the supreme pontiff, while remaining supreme pontiff, can be excommunicated and suspended, so that whatever

¹¹⁶ Mansi 29.513, 533.

¹¹⁷ *De concordantia catholica*, II, xxv, 207: *Opera*, vol. 14, pt. 2, pp. 248-9.

he tries to do is of no effect, even in regard to sacramental absolution; see Nicholas of Cusa.¹¹⁸

To all the chapters which seem to assert that the supreme pontiff cannot be judged unless he strays from the faith, as in c. *Si papa* [D. 40 c. 6] and c. *Oves* [C. 2 q. 7 c. 13], the answer is, "A pertinacious man is presumed to have strayed from the faith and is included in pertinacious heresy." Or the answer is, second, that, as is obvious from c. *Si papa*, what those canons say is that no individual can judge the pope; and this is not said of a collective body. The answer is, third, that a council must not be assembled against the pope in the ordinary way, unless in a case of heresy or of grave sin scandalizing the whole Church; and to support this there is § *Symmachus* [D. 17 p. c. 6 § 1], where we read, "Pope Symmachus, bishop of the apostolic see, beset by attacks of this sort, as regards men, is immune and free. We reserve his case wholly to God's judgment." It is said that his accusers could not prove the charges which they brought; and so, as being matters hidden from them, the holy fathers in the synod left them to God's judgment, authoritatively condemning his accusers.

Last Chapter [xiii]

In which it is inquired how a council may be assembled against the pope

Since it is sufficiently established by what has been said that the council has jurisdiction over the pope, therefore, in a case in which a pope might come to be judged, how may a council be assembled? This question must be asked, because it is not likely that a pope would assemble a council against himself.

The first proposition is this: it is not for anyone other than the pope to assemble a council with the authority of divine law. It is proved as follows: assembling a council authoritatively means commanding those who have to be present to assemble in a certain place; but no one apart from the Roman pontiff can command the

¹¹⁸ Cusanus' point on sacramental absolution is the opposite of what Almain says; see *De concordantia catholica*, II, xviii, 162. *Opera*, vol. 14, pt. 2, pp. 198-9. The editions erroneously cite c. 11.

individuals who have to be present by the authority of divine law to assemble in a certain place; therefore, no individual apart from him can assemble it authoritatively. To assemble authoritatively is to assemble by an authority which others are bound to obey by reason of that authority. I say, "no individual," deliberately, because one council can assemble a future council authoritatively by commanding individuals that they assemble in a certain place at a certain time. If the pope's order commanding this must necessarily be obeyed, *a fortiori* the council's command must also [be obeyed]. Concerning the college of cardinals, however, according to those who say that [the cardinals] have a hierarchic status, succeeding by Christ's appointment the apostles as they assisted Him and Peter before their separation, as d'Ailly says, it is not improbable to say that this authority belongs to that college by divine law if the pope refuses to assemble a council when a case of necessity arises.¹¹⁹ Therefore, the twelve apostles, and not Peter alone, summoned the multitude of the disciples [cf. Acts 6:2]. It seems to follow from this that not only those of the episcopal order must be called to a council to have a deliberative voice; but also those of the order of parish priests, who are the successors of the disciples. (But that is for discussion elsewhere.) But, since the pope and that college may be so obstinate that, even when the need is urgent, they refuse to summon the council, perhaps because it is to be assembled to correct their evident excesses, how then may it be assembled?

The second proposition is as follows: any individual church which has become aware of the necessity of assembling a council should show the other churches the need for an assembly and so assemble it by way of proclamation, not command, naming a place to which there would be safe access for all. The eye, seeing the body's peril, should notify the other members so that the body may protect and defend itself from the peril; and, once this notification has been made, the other churches are bound to consent and to meet with the first, not by virtue of the first's command, since it has no jurisdiction over them, but by virtue of a divine command, just as, after something necessary for his life has been indicated to someone by an expert physician, he is bound to it not by virtue of

¹¹⁹ *Tractatus de ecclesiae, concilio generali, Romani pontificis et cardinalium auctoritate* Du Pin, vol. 2, p. 930.

his command but by that of a command of natural and divine law.

It follows as a corollary that prelates in many provinces, being sufficiently informed of the need for a council, not working otherwise for the peace of the Church, are not safe in conscience.

Third proposition: if, following information of this sort, individual churches send their legates to a certain place, the whole of the Church's authority resides in that collective body, indeed even if they should meet by chance, as Jean Gerson¹²⁹ says, "Who would doubt that such authority was in the college of the apostles," who had gathered by chance, it is said, at the passing of the virgin [Mary], "just as if they had assembled at Peter's command."

Fourth proposition: if some individual churches, informed of such a matter, meet in a certain place, and others refuse contumaciously to gather there or in any other secure place, the whole Church's authority resides with those who gather, at least as far as dealing with the necessity arising. If the right hand were bound or obstinately refused to apply itself to the body's defense, then all authority to defend the body would reside with the left. If one part of some province, when enemies wish to destroy it, refuses to resist, who doubts that the remaining part, although inferior in numbers, have for the time being authority to defend the whole province? If one part of that province refused to consent to the death of some member, whose life tended toward the ruin of the whole community, there is no doubt that the remaining part could remove that member and resist the danger then threatening, although it could ordain nothing concerning other things from which no peril then impended. Therefore, in the case stated, when the churches assemble, while the others refuse [to do so], it is with the former that authority in regard to the prevailing need resides.

This much is what I wrote in Paris in favor of the authority of the Church, the spouse of Jesus Christ, with His aid, against the assertions of Brother Tommaso de Vio in a certain tract which, as he testifies, he wrote in the year of salvation 1511, the forty-third of his age. I wrote the above in the year of the Lord 1512, in the first year of my doctorate, in the second month. Concerning my

¹²⁹ This quotation does not appear in the ecclesiological works of Gerson. See, however, the discussion of the powers of the apostles in *De potestate ecclesiastica*, OC 6.232-6.

age, lest I should seem to be driven by the wind of vainglory, I am silent. If anything in these things should be erroneous, I protest myself always to be subject to the determination of the universal Church.

TOMMASO DE VIO OF GAETA

The apology of Brother Tommaso de Vio of
Gaeta, master general of the Order of
Preachers, concerning the authority of the
pope compared with that of the council, to
the most reverend Niccolò Fieschi,
well-deserving cardinal of the holy Roman
church

Prologue setting out the reason, intention
and order of the work

The charity of Jesus Christ and His holy Church, reverend father in Christ, protector and lord, compels me to follow in these things the example of Him Who, *when He was reviled, did not revile* [1 Pet. 2:23], [not reviling Jacques Almain] a dangerous man, one who saps ecclesiastical power, a forger, a flatterer and a blasphemer, but to respond to his objections against the doctrine asserted on behalf of the truth in *Opusculum de comparatione auctoritatis papae et concilii*, published by me and dedicated to your most reverend lordship. Although many of the objections might easily be resolved by the said men, for whom alone, as I bore witness there, I wrote that work, nevertheless, because we, who are debtors to the wise and the less wise, should be ready to *satisfy every one that asketh us a reason of that faith which is in us* [cf. 1 Pet. 3:15], therefore, [our] replies must extend to the full range of the objections. It seemed a convenient order if the objections were brought forward and answered

following the order of the chapters of my book; they will be then a kind of commentary on it.

I ask, therefore, first, that all should be mindful of formal speech and the subject matter and reflect maturely before expressing an opinion, lest the important subject under discussion should be reduced, by multiplying arguments out of intellectual vainglory, to [mere] dialectical or even sophistical disputation. And, since general principles should be given priority over particular points and roots over branches, therefore, the fundamentals of this matter must be reviewed more broadly and deeply, according to [our] powers.

You must know then, that, since positive laws are established by ecclesiastical power, and the subject of ecclesiastical authority itself is the question at issue, the truth stems not from positive law but from natural law, or divine law or both, as from its cause; from positive law, however, as from a witness [to it]. So far as sufficiency of light has been vouchsafed to me, there are only two foundations, one from natural law, the other from divine law, on which the entire edifice of doctrine elevating the community of the Church above the pope in power, so that he is subject to it, is supported. If they are rooted out, then the whole [edifice] will collapse. First, therefore, these things are to be treated in six chapters. Then we must answer one by one the particular points in the order proposed.

Chapter I

In which the foundation from the law of nature is examined

The authority of the community of the Church over the pope is established from natural law by arguing that a perfect and free community is [one] that is able to provide for itself in regard to its prince, to protect itself against him when he uses [his] power to [its] destruction, and to coerce, punish and remove him when he deserves it. If one adds to this principle that the universal Church is a perfect and free community, and that the order of grace, instituted by Jesus Christ, does not take away but perfects nature,¹ the plain conclusion is that the universal Church is able to provide for

¹ Cf. Thomas Aquinas, II^a II^m q. 12 a. 2 *Opera* (Parma), vol. 3, pp. 50-1

itself in regard to the pope, to protect itself against him, to punish and even depose him, and, altogether, be his superior.

Although this argument has been met in Chapter xxvii by the fact that the Lord Jesus did not leave the Church free in this respect, yet the nature of government [must be considered] more deeply, for it takes different forms according to the source of its nature. For [in one form] it resides naturally in a single person, who is the natural head of that community, as is obvious in the government of a household, where authority resides naturally in the paterfamilias. [In another form], however, it resides naturally in the multitude in common, as is obvious in the government of a city, apart from any superior lordship. Ecclesiastical government embraces both the domestic and civil forms, according to what the apostle says, *You are fellow citizens with the saints, and the domestics of God* [Eph. 2:19]. And, therefore, we must consider more deeply what it is, not [disputing whether this is so] on account of the immensity of divine power, nor [whether this is so] on account of the suitability of divine wisdom, justice or goodness (since *No word shall be impossible with God* [Luke 1:37], nor can anything He wills, whatever its nature, not befit God),² but from the very nature of the case. Just as we define domestic and political governments in terms of themselves, so it is necessary for the nature of the ecclesiastical government to be seen in terms of itself.

Since the natural propagation of a government, just like of other things, shows the nature of the thing produced, let us consider that the Church derives the first principle of [its] origin, perfection and power not from individuals or the community but from the head who shares its [human] nature, Jesus Christ, since He said to His Church, *You have not chosen me: but I have chosen you* [John 15:16]. Therefore, the nature of the ecclesiastical government, from its very birth, is not that it is in the community, nor from the community, nor is it devolved to one or more by the community, as happens in human civil government; but it is, by its very nature, in a single prince. Since that prince, one and the same Lord, *Jesus Christ, yesterday, and today; and the same forever* [Heb. 13:8], lives and reigns, it is necessary, as a consequence of natural law, that it is for the

² Cajetan seems to be referring to controversies over the absolute and ordained power of God

prince, not for the community of the Church in His absence, to provide for a vicar, not of that community, which, like one born a slave, lacks the right to rule as prince, but of its prince, the natural lord of that community. Our Savior deigned to do this Himself when He instituted the apostle Peter alone as His vicar after the resurrection, before He ascended to heaven, as is obvious from the last chapter of John (cf. 21:17). The upshot is, therefore, that, just as the prince of the Church does not have authority naturally from the community of the Church, so His vicar has authority naturally not from that community but from Jesus Christ.

It is obvious, therefore, first, that the community of the Church, considered according to its own nature, is not such that it is able to provide itself with a prince; and thus neither is it able by its own nature to punish, depose or do other things of this sort to its prince, because, as was said, it was born a slave. It is obvious, second, that this community, according to its own nature, is not such that it is able to institute or depose the prince's vicar, who is called the pope. If the community of the Church has a certain power to make dispositions concerning the prince's vicar, whatever that [power] may be, it does not have it from its own nature but from another source.

From these points, then, it is quite obvious that the foundation from natural law for the Church's power over the pope has been rooted up, since it makes a false assumption by saying that the Church is a free community as far as the right of ruling, although it is supremely free with the liberty of grace. Indeed from the law of nature itself, granted the Church's nature, which God ordained for it, the opposite has been shown to follow. Accordingly, the order of grace does not take away in the Church the order of nature, which was intended to be there. The order intended in the Church was not such that the right to rule belongs to it and [this right] is taken away by the order of grace. But in the Church, by its nature, such an order was intended that the right to rule is not in it but in its natural Lord. The consequence is that grace does not take away but perfects this order of nature in the Church, and it is embraced by the wisdom of Jesus Christ, which *ordereth all things sweetly* [Wisd. 8:1].

It also is quite obvious that it follows on this basis that everything cited as characterizing any mystical body, in regard to the right to rule, does not belong to the community of the Church by its nature.

I say, however, "in regard to the right to rule," on account of those things which belong to private persons, like repelling force with force according to the standard of blameless response [cf. Cod. 8.4.1], and taking a sword from the hand of a madman, and anything of that sort; indeed we shall not be mistaken in distinguishing these things. An infallible sign of the servitude of the Church's community in regard to the right to rule is that it cannot retain the government in itself nor commit it to two or three [persons]. It is obvious that a free community could do these things. It can rule by itself, institute a triumvirate and other things of this sort, even superior to the king whom they choose, which it is absolutely obvious the Church cannot do. Otherwise, it could locate the pope's power of jurisdiction in many at one time, or institute some office superior to the pope in jurisdiction, and place the government of the Church in one or many persons, so that [this office, exercised] by those to be named, could rule the Church and the pope in the place of the community of the Church itself.

Because, therefore, natural law, founded on the Church's very nature, does not establish the Church as superior to Jesus Christ's vicar, we must inquire whether the community of the Church has this right from another source, namely, from divine law.

Chapter II

In which this foundation from divine law is examined, and how the church is understood in the words, *Tell the Church* [Matt. 18:17]

Although it is asserted by many, and was defined by the Councils of Constance and Basel, that the community of the Church has power directly from its prince, Jesus Christ, over the pope, that prince's vicar, nevertheless, nowhere in sacred Scripture, in which divine law is promulgated, is it stated that this is held except where the Lord says, *If thy brother shall offend against thee* etc. [Matt. 18:15], and He adds, *Tell the Church. And if he will not hear the Church, let him be to thee as the heathen and publican. Amen I say to you, whatsoever you shall bind upon earth, shall be bound also in heaven; and whatsoever you shall loose upon earth, shall be loosed also in heaven* [Matt. 18:17-18]. In these words it is obvious that it was given to the Church, not one of its members – "church" signifies

not some member but all of them together – to hear, excommunicate, bind and loose every brother and everything on earth. The text adds in the plural, *Whatsoever you shall loose* [Matt. 18:18], to indicate the Church's authority.

From this text it appears, first, that the Church has authority directly from the Lord Jesus Christ. Indeed He Himself spoke thus to the Church no less than to Peter when He said, *Feed My sheep* [John 21:17] and, *Whatsoever thou shalt loose upon earth* etc. [Matt. 16:19]. It appears, second, that, since this prince's vicar is brother to any of the faithful, according to the text *All you are brethren* [Matt. 23:8], if he sins against me, he can be denounced to the Church and proceeded against according to what follows. It appears, third, because it is part of the same power to be the ordinary judge of the prince's vicar and of the other individual members of the Church and to ordain concerning them, that, from this same text, the community of the Church was instituted with absolute superiority to regulate the Lord's vicar and the other members of the Church.

This argument, although it was treated and answered in many ways in Chapter IX of my book, nevertheless, it must (if it is possible for me) be reiterated in greater depth and more broadly, because everything depends on it.

Since we know principles from their terms, we will examine, first, how "church" is to be understood here in the text *Tell the Church And if he will not hear* etc. [Matt. 18:17]. For this passage must be verified concerning "church," either, universally, concerning every church, or, singularly, concerning the universal Church, or concerning the Church absolutely, or of some specific church, or concerning "church" without distinction, not specifying this one or that. Now, since the reference is to "church" in the act of hearing and judging,³ there cannot be any other sense in which this is verified concerning "church." It is necessary for this judicial power handed over by the Lord to belong either to all churches, to a certain church or to the whole universal Church.

That the reference is not to the universal Church alone is proved by the fact that this command of the Lord concerning denunciation of my neighbor who sins against me does not oblige me to have

³ Reading *iudicandi* as *iudicandi*

recourse to the universal Church. It is not necessary that, when my brother sins against me and [remains] incorrigibly pernicious after witnesses have been brought, I should tell the council of the universal Church, as is obvious. Nevertheless, if this passage referred to the universal Church alone, the Lord's command would carry that obligation, because, according to this interpretation, it would oblige me to tell the universal Church. The sense would be, *If thy brother shall offend against thee etc. Tell the universal Church* [Matt. 18:17].

Further: if power is given to the universal Church in this text, since entirely greater power is not given to it than to Peter – for the same power has been given to both, since *Whatsoever you bind or loose on earth etc.* [Matt. 16:19, 18:18] is said to both – how could the community of the Church usurp for itself greater power of jurisdiction than Peter's? How, again, could Christ, the eternal wisdom, have instituted two entirely equal powers in the Church without a third power superior to both? They would block one another, since equal does not have power over equal. What sort of perplexity would leave the sheep free, so that they may obey whichever they wish, or neither or both commanding contraries at the same time. Therefore, the reference in the present text is not to the universal Church alone.

On the same basis it is obvious that the reference is not to the Church absolutely, as distinguished from such and such a church, for example, that of Milan, that of Bologna etc. This is the same as saying that the reference is to the universal Church, which has been excluded. Because, moreover, there is no greater reason for specifying one church rather than another, therefore, it is obvious that the reference is not to any one church individually, nor to all [churches], together or apart, on the basis of the aforesaid argument, because I am not obliged to denounce a brother who sins against me to all the churches.

The reference, rather, is to the Church without distinction or definition, so that judgment of the brother who sins is given to the Church, not specifying this one or that. Since the actions are those of individuals, and the accuser has recourse to the forum of the accused, the appropriate church is determined by the brother who sins. *The Church* means that of the brother who sins. So the literal sense of that text is, *If thy brother shall offend against thee, tell his church; and if he will not hear it etc.* This, without a doubt, makes

the command binding without any inconvenience; and, it is confirmed by common sense and the Church's custom. For, thus understood, the Lord's doctrine *ordereth all things sweetly* [Wisd. 8:1]. Do not go astray by misunderstanding "the church of the brother who sins," since "his church" is not his own alone, but any other having jurisdiction over it, as is obvious.

Chapter III

In which is discussed the meaning of "Church" in the text, *Tell the Church* [Matt. 18:17]

Concerning this word "church," again, we must see what it signifies in the text *Tell the Church*. Lest we be judged to have gone astray in a multitude of expositions, "church" properly should be understood as the gathering or collective body of the faithful.⁴ [Our opponents] say, however, that "church" in this passage signifies the community of the faithful not in themselves but in their prelates, whether the pope is present or not.

But that this is not the literal sense is obvious from the fact, that it is necessary to understand the term "church" in this text, with respect to what is the sinner's church, with one and the same signification. So since, as is obvious from what has been said, we say without distinction, "*Tell the Church* of a brother who sins, which he is bound to hear," without specifying the universal [Church] rather than a particular one, or conversely, it is necessary for "church" to have the same meaning when it is applied to the universal as when [it is applied] to a particular one, as is obvious. It is obvious that, when a brother of the church of Milan is to be denounced to it, one is not commanded by the Lord to tell this church (namely, the community) whether the bishop is present or not. Therefore, when one is commanded to tell "the church" without distinction, the community is not meant, whether the head wishes to be present or not.

You must know, therefore, that, although, from the force of the phrase, *Tell the Church* may signify, "Tell the gathering" (doubtless that of the faithful), nevertheless, from the context of the words that follow, *Amen I say to you . . . whatsoever you shall loose upon*

⁴ Thomas Aquinas, m^a q. 8 a. 4 ad 2: *Opera* (Rome), vol. 11, p. 131

earth etc. [Matt. 18:18], it is inferred that it is to be understood, not of any gathering of the faithful, but of the authoritative one; otherwise, a gathering of the Milanese faithful without its prelate would have from the Lord the power to judge etc. Therefore, *Tell the Church* is equivalent to, "Tell the authoritative gathering."

It is inductively obvious that, in individual churches, there is no authoritative gathering when the prelate of that gathering is absent; therefore, neither is there an authoritative gathering of all the faithful where the shepherd and ruler of all the faithful, the pope, is entirely absent, [present neither] in person nor through another. The reference is to an authoritative gathering, or "church" simply and absolutely, and not according to this or with respect to that, such as deposing a heretic pope or a future election etc. Now, indeed, we are inquiring into superiority, simply and absolutely [understood].

Our statement that the prelate of that church is included in the term "church" in this text should be explained more fully. The point is that, if its prelate is not included, it is necessary to say one of two things, either that the community of the faithful in any particular church has from the Lord, even against the bishop's will, the power of jurisdiction in excommunicating etc.; or that the text, *Tell the Church*, did not refer to the community, and, similarly, that *Whatsoever you loose upon earth* etc. [Matt. 18:18] was not said to it.

The conclusion is evident: because the authority was given to the Church, and, if the community is understood by the term "church," the community itself has the bishop's authority, willy-nilly; and, if it does not have it, the upshot is that it is not signified by the term "church" in that text. The first of these cannot be affirmed; therefore, the second is true. It is a token of this point that it agrees with the gloss of the holy doctors, "*Tell the Church*, i.e. the prelate," as head of the assembly.⁵ According to this interpretation, the man who is pope can declare the crime of another church to an authoritative assembly, as Pope Nicholas writes in c. *Præcipue* [C. 11 q. 3 c. 3], threatening King Lothar. Nor is it an obstacle [to this] that he himself is its head, because it is accidental that the one denouncing and the prelate of the assembly happen to be one and the same person.

⁵ Nicholas of Lyra at Matt. 18 17, see *Biblia sacra cum glossa ordinaria* (Antwerp, 1617), vol. 5, col. 306.

Having due regard to the context of the gospel, the Lord wishes the authoritative assembly to be summoned, in which the power of the council would derive from the plurality of those assembled; but judicial authority would derive from the prelate's authority. For this reason, He turns, in what he says, from the Church to its prelates. Having spoken first of the Church, *Tell the Church*, and, *And if he will not hear it* etc. [Matt. 18:17], He did not go on, "Amen I say to you whatever the Church looses on earth"; but rather, *Amen I say to you . . . whatsoever you shall loose* [Matt. 18:18], conveying by this that reproof should be a matter for the common council of the assembly but that loosing and binding, to be [done] by the Church, must be done by the authority of the prelate, according to what has been concluded [here]. He spoke in the plural, however, *You shall loose*, either on account of the plurality of those gathered to discuss and decide, or on account of the plurality of heads in many churches, concerning which He said *Tell the Church* without distinction

Chapter IV

In which is discussed whether the Lord by those words in Matthew 18 gave power directly to the Church, and how much He gave it

Although from the subject matter and signification of "church" in this text it is obvious that this passage [of Scripture] is not restricted to the universal Church, but that the reference is to "church" without distinction, nevertheless, up to now it still remains obscure; and, therefore, we must establish whether the Lord gave the power of jurisdiction directly to the Church without distinction, and how much authority He gave it.

The reason for obscurity in the first point is that, if the Lord gave the power of jurisdiction directly to the church of a brother who sins against me, it would follow – since any church could be in that position – that any church would have the power of jurisdiction directly from the Lord; [and] that does not sound right. If, however, He did not give it to every church of a brother who sins against me, since there is no greater reason in respect of one than of other, He gave it to none by this text, which is inadmissible.

The reason for obscurity in the second point is that the words addressed to the Church in this text and the words addressed to Peter, *Whatsoever thou shalt bind upon earth, it shall be bound also in heaven: and whatsoever thou shalt loose on earth, it shall be loosed in heaven* [Matt. 16:19], contain an equal power. However, it is not appropriate that there be [two] equal powers of jurisdiction in the Church without a third power in it superior to both of them; plurality of sovereignty is bad.⁶

I think that the first step toward clarifying this must be to eliminate the supposed meaning, so that the truth may shine forth instead. So we must say first that for the Lord Himself to give that power, *Whatsoever you shall loose*, directly to the community of the universal Church is repugnant to the proper relationship between the pope and the Church, because, as we have said, it posits two entirely equal powers of jurisdiction in the Church, those of the community of the universal Church and of the pope, ordained directly by the Lord, without having a third power in the Church itself superior to both of them. This conclusion is obvious from the texts of Matthew 16[19] and 18[18], where, as we have said, the same words are found addressed to both.

Although this is inconvenient in itself, nevertheless, it is made more obvious if we consider how, if Christ, the eternal wisdom, instituted plurality of principates in the Church, the two powers would block one another, how perplexed or unrestrained Christ's sheep would be, faced with contrary commands, so that they might at will obey either, or neither, or both contrary commands, which is impossible. What is more, if this power given directly to the universal Church were posited, whence would the community of the Church claim for itself power over a pope having equal power, since equal has no power over equal? Since the power would be entirely equal by reason of which the Church [would be] superior to the pope, as one of its members, it would have jurisdiction [over him] (for it is written, *If he shall offend etc., tell the Church*); on the very same basis, the Church being the pope's fold (for it is written, *There shall be one fold and one shepherd* [John 10:16]), the pope would have jurisdiction over the community of the Church, or neither [would have jurisdiction] over the other.

⁶ Literally, "of principates"; see Aristotle, *Metaphysics*, XI, 10

We must say, second, that His giving that power – *Whatsoever you shall loose* etc. [Matt. 18:18] – directly to the community of any church is repugnant to the Church's custom; and the reference always is to the community of the Church, as our adversaries understand [it, namely,] whether or not the prelate is present or entirely absent. This is obvious from the common custom of the Church by which such a community, against the will of its bishop and the pope, cannot loose and bind; which, however, it could do, if the community of any church had power directly from the Lord.

We must say, third, that His giving that power – *Whatsoever you shall loose upon earth* etc. – directly in its fullness, as applying to any church authorized by its own head, apart from the one whose proper head is the pope, is repugnant to the essential order of the churches and to their profession [of faith].

As for the order, the point is that, if the supreme authority of any church authorized by its proper head, as the Lord said, is asserted from this text to have been given directly by the Lord, two things follow: first, that any church has authority directly from the Lord; second, that any church has entirely equal power of jurisdiction from the Lord, although one exceeds the other in extent, and the universal Church [exceeds] them all. The conclusion is refuted in both cases, because it was given without distinction, directly and unequally to the Church, as is obvious in the text and from what has been said, and not [given] more to one [church] than to another, as is obvious on the same grounds.

From this follow, furthermore, both parts of a contradiction, namely, that one church is absolutely superior and is not absolutely superior to another [church]. From the fact that any church has power over its subjects from the Lord it follows that one church, say, the universal one, is absolutely superior to any individual church as being one of its members; and thus it can dispose and decree concerning it, and issue an order concerning its power, annulling anything done to the contrary. In so far, however, as any church has entirely equal power directly from the Lord, it follows that the universal Church cannot take away anything from a particular church's power of jurisdiction, for the power given to anyone by a prince cannot be taken away by an inferior. Consequently, it follows that the universal Church is not absolutely superior in the power of jurisdiction with respect to an individual church; for it is

an aspect of superior power of jurisdiction to be able absolutely to annul an act of an inferior if it behaved in this way.

The remaining inconveniences which would follow from full equality of the power of jurisdiction in any church, for instance that a subject would not be bound more to obey the universal Church than a particular one, since equal has no power over equal, that whatever is done by one can be blocked by the others, and the rest I leave to be deduced by men of ordinary erudition.

This, again, is repugnant to what the churches themselves profess, because, when the pope reserves, prohibits etc., the other churches admit that they do not have power over what is reserved, prohibited etc., which they would not truly say if they had received that power directly from the Lord. The issue throughout is of this sort, concerning the granting of power by ordinary law.

From all of these points you are to conclude – since this ample power belongs to Peter's church alone, and these words were not said to Peter's church alone – either that no ordinary power of jurisdiction was given by these words, or that a less ample [power was granted] than that given to Peter. And this is in fact the case. The Lord's words do indeed manifestly contain the power of jurisdiction in the Church, nor is this to be put in doubt. But what they do not contain is that such power was given by the Lord through these words, as is manifested by going over the points one by one and by reason.

Going over the points one by one, for no power is given by that phrase, *Tell the Church* [Matt. 18:17]; rather denunciation is commanded; for *Tell the Church* is the same as, "Tell the judge," where it is obvious that jurisdiction is not given, but denunciation is commanded. From the words, *If he will not hear the Church, let him be to thee as the heathen and publican*, since that is the same as, "If he will not hear the judge, let him be to you like the heathen and the publican," it is quite obvious that no power is given, but that avoidance of him in a case of pertinacity is enjoined by the Lord. It is obvious, lastly, that no power is given at that time by the words, *Amen I say to you . . . whatsoever you shall loose* etc. [Matt. 18:18], from which it is obvious that no power was given to Peter at that time by those same words, *whatsoever thou shalt loose* etc.; but [it was given] after the Lord's resurrection, when *Feed My sheep* [John 21:17] was addressed to him.

By reason: for the power of jurisdiction contained in these words of the Lord either was given to the Church, to which the Lord spoke, at that time; or it was not given then. Since these are in opposition as contradictories, there is no middle way. If [it was] not, the point is proved. If it was granted to the Church at that time, then that power of jurisdiction was given directly by the Lord to any collective body or assembly of the faithful, which the term "church" conveys. This [viewpoint], however, belongs to the heresy of the Poor Men of Lyons, who say that, wherever the faithful are assembled in the Lord's name, there is power, since power follows from a person's sanctity. It differs only according to one and many.⁷ The conclusion is obvious: that the Lord, speaking of the Church without distinction, extended the command and sentence to any church of a brother who sins. It is obvious that the collective body or assembly of the faithful without any prelate truly would share among them the name "church."

A confirmation of this is that, concerning the collective body [of the faithful], it is necessary for [our opponents] to concede that the Church [already] is said to be there [cf. Matt. 18:20], because what [already] exists does not come to be, and no one is given what he already has. If, then, the Church is put in possession of power by these [texts], it does not have it; therefore, that collective body in the text is one that does not have authority but receives it here. Since there is no reason concerning the one, [the Church], than the other, [a particular church], the same thing follows as before, that any collective body of the faithful will have received the authority of jurisdiction from the Lord on this basis. If someone says that the authorized collective body of the faithful is understood here by the term "Church," then the previous argument [p. 212] concerning the essential order of the churches applies. It militates against His granting [this power by these texts], for there is no giving to the one who has, and the one [already] having power does not become the one having power.

⁷ Waldensian doctrine, sharing equal power among many individuals, was repugnant to the orthodox emphasis on hierarchic order. Cajetan treats conciliarism as subversive of order by granting the whole Church, not just the pope, its "prelate," supreme power.

Because, therefore, it is obvious from what has been said that the authority of jurisdiction is contained in the Lord's words, and was not given by these words, we must say that by these words the Lord expressed, in addition to the command concerning fraternal correction, denunciation and its procedure, the efficacy of the power of ecclesiastical jurisdiction by these words in the text, *If he will not hear the Church* etc. [Matt. 18:17] and *Whatsoever you shall loose upon earth* etc. [Matt. 18:18]. He shows that the Church's sentence is of such efficacy that it must be observed undoubtedly by us and is ratified in heaven. This is all that the Lord did by means of these words; He put into place the power of the Church at another time [cf. John 21:17].

It can be admitted that He promised it by these words, *Whatsoever you shall loose*; but for both points, namely, that the power was set up and was promised, it is enough that it was conferred at some time; and, similarly, in regard to the means, whether it was given mediately or directly. Indeed, after the resurrection, He gave the power directly to Peter and thus to His church, saying, *Feed My sheep*; to the other churches, however, by way of Peter, according to the ordinary process, although, as a concession, by means of the other apostles, to whom it can be conceded that this was promised.⁸

The literal sense of the Lord's words is, therefore, that the power of any authorized church over its subjects was to be such that its sentence would be valid both before men and in heaven. The meaning to be embraced here must be that with which everything is in accord; the sequence of the text, the sense of the words, the texts of the saints, the custom of the Church and the avoidance of all inconsistencies, all of them I leave aside because of what already has been said here and in my book. I think that these points are obvious enough; and this is a sufficient explanation of the Lord's promise, which He made to all the churches by way of Peter ordinarily and by way of the other apostles by way of legation.

⁸ For this argument that a special concession was made to the other apostles, see Chapters III and IV of *De comparatione*.

Chapter v

How the Church has the power of jurisdiction which is contained in the Lord's words, whether in respect of its totality or of a part [of it]

Because it is obvious that the Church, concerning which the Lord spoke, has the power of jurisdiction, notwithstanding the fact that it was not given to it by these words, and [because] this can be understood in various ways, it seems opportune to discuss the way in which the power of jurisdiction is in the Church.

You must know that there are two ways of understanding how the Church in this text [Matthew 18:17] – in which the Lord orders that the offense of a brother who sins must be denounced – has the power of jurisdiction in the external forum (which is the subject under discussion), corresponding to two ways in which something may be said to be true of the Church, which signifies a certain [kind of] whole. First, [it can be true] by reference to a part; second, by reference to the totality or whole of it – just as we say of a man, who is a certain whole, that he sees, hears etc., and it is said to be true by reference to a part, because he sees through the eye, hears through the ear etc.; and, on the other hand, we say of the same man that he is the most perfect of animals, a political animal and so on, and this is said to be true by reference to him as a whole, as is obvious.

There is no doubt that it is said to be true of the Church that it has the power of jurisdiction to loose and bind in the external forum by reference to a part, namely the head; and this is the only way, as will be shown more fully, that the gospel's statement that the Church has power can be said literally to be true.

That this may be said to be true of the Church taken as a whole can be understood in many ways. First, taking the Church as a homogeneous whole, of a similar nature throughout, as the Church is the collective body of the faithful; for all the faithful, as the faithful, are of one nature. Thus the sense would be that the Church, the collective body of the faithful, has the power of jurisdiction etc. If *Tell the Church* [Matt. 18:17] were understood in this sense, it would follow that, since there would be no distinction of sex and status in the faith, the church of laymen and women would have jurisdiction in the external forum. The conclusion holds good, both

because all the faithful are of the same nature and because, if all the clergy in a certain church happened to die, "the church" in this sense, the collective body of the faithful, truly remains there; and, consequently, according to that notion, it would have the power to excommunicate. Indeed, if it were considered well, taking the Church as a homogeneous whole, since faith alone is its nature,⁹ it is only an accident of that whole that some part of it is of the clerical state, because power is placed in that whole as such. Second, again, it can be understood, taking the Church as a heterogeneous whole, that is, of a dissimilar nature, just as the Church is made up of all members holding office, such as a bishop, priest, deacon or other members, whatever appointments they may hold, then this whole is like a body made up of eyes, hands etc. Thus the interpretation of *Tell the Church* would be, "[Tell] the whole gathering of the members of the church."

If it is understood in this sense, that the whole, itself, considered as a totality, has the power of jurisdiction, there are three objections. First, that entirely equal power would be placed in any church whatsoever, since only one power was mentioned by the Lord, and no more in reference to one church than to another, as is obvious in the text and from what has been said. Second, that there would be entirely greater power in the Church than that *Whatsoever you shall loose* etc. [Matt. 18:18]. The conclusion holds good, because the power of the whole Church, considered in its totality, is posited as superior even with respect to the papacy. The falsity of the consequence is obvious from the Lord's words, repeating those which He addressed to Peter, *Whatsoever thou shalt loose upon earth* etc. [Matt. 16:19]. Third, that what is the basis of their whole argument would not have been given directly by Christ. The conclusion holds good because the sacrament of orders was not instituted then, which, it is certain, was instituted together with the sacrament of the eucharist on the day before the Lord suffered. Therefore, the Lord did not then give the Church, namely, the community of the priests, deacons and bishops, who make up the general council, the power of jurisdiction, because they were not priests, deacons, bishops or clerics; nothing is given to something not in existence. If it is said that the Lord did not give it then but promised that He

⁹ I.e., its substance.

would give it in these words, *Whatsoever thou shalt bind* etc., I maintain that nowhere in sacred Scripture is it held that the Lord by Himself gave the power of jurisdiction directly to the community of the Church.

If you insist that He fulfilled what He promised, the answer is obvious, that He did not promise that He would give it directly by Himself, as is obvious from the text; and, therefore, it is not necessary that He should have fulfilled this Himself. For He would have kept His promise, just as, in truth, He made good those words of His *de facto* by means of Peter mediating to all the churches.

In regard, then, to the community of the Church, however it may be understood, [our adversaries' argument] based on its totality is not shown to be true by the Lord's words in Matthew 18:18, words which form [their] whole basis in terms of sacred Scripture: their entire position rests upon the claim that the community of the Church, considered in its totality, holds power directly from the Lord. The consequence is that the Lord's words are shown to be true concerning the Church in respect to a part, namely, the head, as already has been said. Therefore, the common understanding of the faithful is that *Tell the church* means, [Tell] the ecclesiastical prelate by reason of whom the Church has its power.

Chapter vi

How, granting a commonly held opinion, it can be understood that the Church, considered in its totality, can and sometimes does have some power of jurisdiction

Also we must take care not to be misled by occasionally seeing the authority of ecclesiastical jurisdiction in the Church, considered in its totality, into thinking that what has been said above therefore is false. We did not, nor do we, teach that power never belongs to the Church considered in its totality, but that it was not given to it directly by the Lord Jesus Christ in those words of Matthew 18[18].

I do not deny that eastern bishops, meeting together, can jointly establish among those subject to them a kind of single body and single authority, by submitting themselves to it individually; and so

that power, existing in that whole body in respect to its totality, will legislate for those churches and exercise the acts of jurisdiction. Nevertheless, that power will not be able to do anything except what may arise from individual powers and from their subjects. For this reason, if anything had been reserved to the Roman pontiff, that power could not absolve from it. [The case would be] the same if all prelates throughout the world, when the supreme pontiff was dead or absent, met, sharing in one body and unanimous in what they decreed, and established in that whole synod one power over all the churches – excepting, however, those things which are proper to the Roman pontiff. Also, in a similar way, when the pope, celebrating a council together with the other prelates of the world, decrees, absolves, condemns etc. together with them, sharing with the others, it seems as if only one of them acted.

In all of these things and the like there is no power given directly by the Lord Jesus Christ to that community first; nor is there any power apart from the partial powers, but, as it were, a total power emerging from the partial ones.

For among natural things, in a certain sense, form is found to differ in two ways, namely, as one form separated from another (as the [simple] form of the sun differs from the forms of mixed substances), and the form of the whole from the form of a part (as humanity from a human soul), so the pope's power differs from others in the first way, and the synod's power differs from those from which it is accumulated in the second way. And this power is in the whole synod by way of sharing or accumulation in common from individual parts, more or less abundantly, as seems [good] to the parts, and especially to the prince, who never is supposed to add all his authority to the [council's] common stock, but only in so far as is expedient for treating those matters. As an indication of this, he is not understood to subject himself to the coercive power of the synod, however much he consents to the synod's statutes for the ordinary members of the Church.

From this it is obvious that, if the whole Church, apart from the pope, appointed someone to administer the Church, he would be subject to the pope; nor could he absolve in a papal case; and this would not be so if the Church, apart from the pope, had universal and full power directly from Christ in respect of its totality. Similarly, the pope, in as much as it exists by the authority of [his]

power, can annul a general council's statutes, even those made with his consent and authority, which could not be the case if the whole Church had universal and full power from the Lord Jesus Christ in respect of its totality.

From all that has been said, it appears plainly that the root of the Church's power over the pope on the basis of divine law already has been plucked up. Thus, since the foundation from both laws, natural and divine, has been taken away, we must come down to particular objections.

[Responses to Objections]¹⁰
[Concerning Chapter III.]

I said in Chapter III of my book that the Lord so ordained the government of the Church that He instituted Peter as the supreme pontiff from whom, in the ordinary way, power derives to the rest of the Church, and that the Lord Himself, by way of a gracious preemption, gave power to the other apostles.

The other side objects that the power to elect the pope was in the Church before Peter was pope; therefore, it could be said with a greater appearance of truth that Christ, when He made Peter the supreme pontiff, preempted the Church and conferred on Peter as a grace what the Church could have ordained by Christ's institution, rather than that He preempted Peter by giving power to the apostles. The antecedent is proved: because power to elect is in the Church from Christ in Matthew 18[18] etc.

I answer that the assumption is false: for, since the pope's election is that of the vicar of a prince and the election of the vicar of any prince who is alive and present ordinarily belongs to that prince, the consequence is that, since the Lord was present in the Church as prince until Ascension Day, the choice of His vicar then belonged ordinarily to Him. Nor is there any indication that, in Matthew 18 or elsewhere, the Lord gave the Church the right of electing His vicar when He was present. Therefore, the Lord, not preempting but instituting and executing what He promised in *I will give to thee the keys of the kingdom of heaven* etc. [Matt. 16:19] and *There*

¹⁰ Hereafter the translation follows the form of the original printing, ignoring Poller's chapter divisions

shall be one fold and one shepherd [John 10:16], established Peter as pope and the papacy at the same time. Again, as is obvious from the aforesaid Matthew 18, the power to elect the pope was not given to the Church. How and wherefore the power to elect the pope is in the Church will be stated below in [our responses concerning] Chapter XIII.

Notice here that my reference to "preemption" is founded on the determination of the Church itself and the saints. Leo I shows in c. *Ita Dominus* [D. 19 c. 7] that power ordinarily must be derived from Peter by the rest of the body of the Church. That the Lord appointed him in the ordinary way is established by the fact that He appointed not him alone but all his successors in him. This is the act of one who ordains, not of one who preempts, just as, on the other hand, His having made the rest of the apostles His universal legates only in their own persons and not in their successors is an act of gracious preemption. The Church acknowledges this, recognizing only the successor of Peter as having universal power.

From this it is obvious that the power to elect the pope was not in the Church before Peter was appointed as pope, for it has as much power now as then, since the pope could not take it away; and, according to them, the Lord, Who gave [it] by means of appointment, did not diminish it by preempting in the appointment of Peter. In so far, therefore, as it could then elect some other bishop as pope, so when Peter, who was appointed by the prince as an act of grace, was dead, it could appoint another bishop than the Roman one as pope. So the Roman pontiff should recognize that he has been placed over the others by the Church, which grants this to him, [or,] at least does not take [it] away. Nevertheless, Pelagius II teaches the opposite of this in c. *Quamvis* [D. 21 c. 3], "The holy Roman catholic and apostolic church was not placed over the other churches by any synodal decrees; but it obtained the primacy by the gospel words of [our] Lord and Savior."

Further, if the Lord gave this power to elect the pope directly to the universal Church, by what presumption did the Roman clergy and their people etc. usurp for themselves this power to elect the pope so long before anything was decreed and approved by a general council concerning electors? With how good a conscience did so many holy men conduct, perform, accept and put into effect through so few the election committed to the whole Church by

Christ without reference to the others? But there will be further discussion of these things. We have said this much, however, to show the falsity of what was assumed in this objection.

[Concerning Chapter iv]

I said in Chapter iv of the same work that John's opinion would have prevailed etc. But the objection on the other side will be treated properly in [our notes on] Chapter ix.

[Concerning Chapter vi]

I said in Chapter vi of the same work that the pope is the head of the universal Church, and not just of its particular members, as the enemies of truth gloss it.

Two objections are made against this. First, that it is false [to say that] the pope is the head of the Church taken collectively, both because the Church is not Peter's but Christ's, according to *Upon this rock I will build My Church* [Matt. 16:18], not "your [Church]," and because the pope is the Church's minister, not its lord. The Church is the one ministered to and thus is greater, according to the Savior's saying, *He that sitteth is greater than he that serveth* [cf. Luke 22:27]. Also, because all texts saying that the pope is the head of the Church are understood to refer to "church" as individual local churches, with respect to which he is the ministerial head, and not as the whole Church collectively. Second, [they object] that, although it is granted that Peter is ministerial head even of the universal Church, yet it is not necessary for every property of a head to be retained in him – in particular, superiority in authority over the entire remaining part. Especially so since the whole Church is not said to be the body of Peter but the body of Christ, as is obvious from Romans 12[:5]. And, as confirmation of this, a king is said to be the head of [his] realm, not so much because he is superior to the assembled realm but [because he is superior] to any given part of it.

My answer to the first proof of the first objection is that the Church's belonging not to Peter but to Christ does not argue that Peter is not its head, but that Peter is not its head of himself, only in Christ's place, as is obvious.

[My answer] to the second proof is that for Peter to be the minister of the Church, which is the recipient of his ministry, is to be inferior not in power, but in exercise. Therefore, the Lord Himself says of Himself that He came to minister [cf. Matt. 20:28], and the pope calls himself, "Servant of the servants of God," and so he truly is. The Church's being greater than the pope, as the end is greater than what exists for that end, demonstrates that it is better; for those things that are not measured by their mass [alone] greater is the same as better.¹¹ According to Augustine,¹² the papacy does indeed exist for the sake of the Church, and not vice versa. Therefore, from the fact that the pope is not the lord but a minister, and the Church is greater in goodness and nobility, nothing is established against the head's power, against which it is directed.

Finally, the answer to the common gloss¹³ is that, although many texts could be glossed thus, nevertheless, not all of them are capable of it, as was shown in [my] book.

The answer to the second [objection] is: it is true that the Church is not Peter's body, but Christ's, because not only is Christ its mystical head, but it is His mystical subject, as is obvious in Ephesians 1:[22-3], where two things are said of Christ, that He is the Church's head and that the Church is His body. And, *For as the body is one, and hath many members; and all the members of the body, whereas they are many, yet are one body, so also is Christ* [1 Cor. 12:12] is said expressly. From this, however, that the Church is Christ's body, and not Peter's, it does not follow that Peter is not the head in Christ's place, but that Peter is not the one who works through this body's members, but Christ, Who works through Peter and the others. Similarly, it does not follow that this head in Christ's place is not superior in authority to the rest of the body, as is quite obvious.

Two points can be made as confirmation: first, no one says that from being head of some group in any way having the power of jurisdiction over that group would follow [necessarily]; for there are

¹¹ Cf. Aristotle, *Physics*, 1,2

¹² PS Augustine, *Quaestiones ex Novo Testamento*, 4, 75. PL 35/2 272

¹³ Cajetan is referring to the first objection stated above in this section concerning Chapter vi of his pamphlet, namely that "all authorities saying that the pope is the head of the Church are understood to refer to 'church' as individual local churches, with respect to which he is the ministerial head, and not as the whole Church collectively."

several ways in which something may be said, metaphorically, to be the head of something else. The pope, however, is the head in that he is the shepherd, head and ruler of the whole Church, and not just of individuals, as is proved there from texts and by reason.

The second point is that, just as a king is the head of the realm, and so superior to it – and, therefore, a king who depends on the realm collectively is not its head, and, therefore, he is not superior to it, but only to its individual parts – so a king who does not depend on the realm collectively, like the King of Kings [cf. Apoc. 19:16], is the head of the assembled whole and superior to it. Therefore, to argue from headship in a king who depends on [his] realm to the pope's headship is not correct, since the pope would [then] depend on the realm of the Church. Nor does he act on the Church's behalf, as such a king does on the realm's behalf; rather he is the vicar of Jesus Christ alone.

I said in the same Chapter vi that the power to elect the pope himself is in the pope's power. But, because it is treated more extensively in Chapter xiii, the objections are answered there.

I said in the same Chapter vi that a council authorized by the pope does not have greater authority than the pope himself.

There are objections against this: first, from the gloss on c. *Legimus* [D. 93 c. 24], "The statutes of a general council prevail over the pope's statutes, if they are in contradiction." Second, that a constitution of the Council of Chalcedon concerning the see of Constantinople prevailed over Leo I's disapproval, as is obvious from c. *Antiqua* [x 5.33.23] and c. *Renovantes* [D. 22 c. 6]. Third, that the general custom of the Church abrogates a pontifical statute.

I answer First, concerning the gloss [on c. *Legimus*], I say that it does not state that opinion definitively but states an argument about it, as is obvious from [the gloss] itself at c. *Nemo* [C. 9 q. 3 c. 13], to which it refers. Second, [the opinion] is admitted to be true in the case of the statute of a council subsequent to the pope's statute, since, just as the pope himself, by making a law contrary to a prior one, annuls it, as is obvious in c. *Licet* [vi 1.2.1], so too a constitution of a council authorized by a pope annuls a pope's prior contrary one. As for the binding force of the council's [decree] in regard to the see of Constantinople, the answer is that it does not prove the council's superiority over the pope, but the pope's toler-

ance. For we constantly see prelates giving way¹⁴ to the multitude of great men, although, if they were willing to use [their] power, they could restrain [them]. Although nothing is stated in those chapters concerning Leo I's disapproval, rather the humble language there is that of those who say, "We beg" etc.

As for the force of universal custom, the answer is that, if this proved that the Church is superior to the pope, it also would prove that the Church is superior to itself, since general custom abrogates a statute of the universal Church. Therefore, abrogation of that sort is not done out of [superior] power but in an executive way with respect to the Church, and negatively with respect to the prince, because it does not compel [him].

I said in the same Chapter VI that, if the Church, that is, the community of the Church apart from the pope, had power over the pope, the Church's government would be aristocratic or popular, in which all authority would reside with no one person, but in the whole community.

An objection against this conclusion is that a government is not called royal because there is a single person in it superior to the rest [of the people] as a whole (for then there would not be any royal government in civil matters), but because there is one person who acts on behalf of the whole people, superior to any individual.

I answer that the conclusion is perfectly sound, the terms being understood formally, because, if authority is in the whole community alone, therefore, as such it constitutes a popular government, although, in so far as it appoints a single ruler, it may constitute another species of government. Again, the conclusion is perfectly sound in regard to the supreme government of the Church, with which we are concerned, since, if the power of the universal Church is in the whole community alone, its supreme government and supreme tribunal, where all matters must be resolved, obviously would be popular, whatever were true of intermediate rule by one [person, the pope]. Therefore, if the people is superior to the king in any realm, it follows clearly that the community of the people as such is a popular government, and that the supreme tribunal is popular, even though [the community] might

¹⁴ Correcting *credere* to *cedere* and *vellet* to *vellent* from the 1514 edition.

ordinarily exercise its jurisdiction over others through another form of government, such as a royal one. Thus the objections to what has been said are not effective, since supreme popular government is compatible with an intermediate royal government, and that is the subject of the question and its formal terms.

[Concerning Chapter vii]

I said in Chapter vii, proving that the pope is superior to the community of all the rest of the Church from the text *Feed My sheep* [John 21:17] and that the pope is the shepherd of the universal Church and not just of the individual sheep.

Two objections are made in response, first by interpretation, denying the point; second, by limitation, [arguing] that the pope is the shepherd of the whole Church in that he administers the spiritual nourishment of God's word and sacraments. These are not exercised by the community, as juridical acts [are].

I answer that this denial will be shown to be unreasonable through reason below in the same chapter in the discussion of the third argument. Now it is shown from the text cited. When the Lord says, *Feed My sheep*, it is admitted without restriction; therefore, it must not be limited to individuals, and not all, as this denial does, for all individuals are His sheep. The second response either says nothing, or it is self-defeating. For it could be understood as granted in two ways: that the pope is the shepherd of the whole Church in that he administers God's word and sacraments, first, authoritatively, second, ministerially, with respect to the whole Church. If authoritatively, he is then truly superior to the whole community of the Church, for feeding authoritatively with God's word and sacraments is the act of one who is absolutely superior with respect to the one who is thus fed, as is inductively obvious, and so the response is self-destroying. If, on the other hand, ministerially, then the pope does not have more [authority] in his own right in feeding than in judicial acts. Now he can perform all judicial acts as the minister of the community of the Church; and so the answer says nothing. The pope, therefore, truly is the shepherd of the universal Church and of its individual members with authority in judgment, justice and God's word etc. on behalf of Him Who feeds all in the innocence of His heart [cf. Ps. 100:2 (101:2)].

I said in the same Chapter vii, on the basis of the text, *There shall be one fold and one shepherd* [John 10:16] that the pope is the shepherd of that fold, and not vice versa.

There is an objection that Christ said to Peter, *Feed My sheep*, not "your," and that Christ gave power over the shepherd to the fold.

I answer that Peter's being the shepherd of the sheep, [who were] not his but Christ's, proves that he is not the shepherd in his own right nor in the place of the community of the Church, as the objectors say, since the sheep belong neither to Peter nor to the community of the Church, but in the place of Jesus Christ, to Whom alone the sheep belong. Therefore nothing else can be concluded from this but that Peter leads not his fold but Christ's, not in his own right but in Christ's place.

The additional point, however, that Christ gave authority over the shepherd to the fold is a gratuitous assertion; and it differs from and is repugnant to the very words of the Lord. It differs because that shepherd's fold constitutes the Church. Now it is usual for the shepherd to head the fold, and not vice versa. It is repugnant, as was concluded at the same point, because there would not be one shepherd, according to the Lord's words, but two, Peter and the fold itself. Because it is obvious from the Lord's words, saying, *Feed My sheep*, that the reference is to Peter; and that there is only one [shepherd] is obvious from the same Lord's authority, the consequence is that to suppose another shepherd is against the Lord's intention.

I said in the same Chapter vii that the pope is no less the bishop of the catholic Church than any bishop [is] of his church, inferring from this proposition his superiority over the catholic Church and not just over its individual members, just as in [the case of] other bishops with respect to their churches.

The comparison is challenged both because an individual bishop acts on behalf of the universal Church, which is superior to his community, and because the individual church which a bishop rules has a superior on earth, which rules that bishop.

I answer, first, that the argument is not founded on a comparison but on the propriety of this opinion: the pope is the bishop of the catholic Church, although it is elucidated by a comparison. Indeed the same argument [applies] to other bishops: Ambrose is bishop

of the church of Milan etc. Therefore, since it follows from this proposition, understood formally, that the pope is the bishop of the catholic Church, that he is the bishop of the community of the Church, the point is sufficiently established.

The objections find a cause of dissimilarity in what is not a cause; for, in what it means to be a bishop (of the catholic Church, or of this or that [particular] church) we can consider what being a bishop involves; and we can consider by whom a bishop is made. Now the objections proceed by considering by whom a bishop is or should be made; our argument, however, proceeds by considering what being a bishop is. It is obvious, however, that in judgments concerning the nature of things, the formal cause and what something is suffice for a conclusion, regardless of the efficient cause whereby they are produced. Whether a man is made by God, like Adam, or by another man, like us, we are of one nature. Similarly, whether a bishop is made by the pope or by the universal Church, whether or not he has a superior, he is of one nature in so far as [he is] a bishop, although of another nature in so far as he is a subject. Therefore, to put it in a word, the argument deals with a bishop as such; the objections, however, deal with a bishop in so far as [he is] subject to another, [the subject] of another and [made a subject] by another.

Since the pope truly is the bishop of the catholic Church, it follows, as I said in the same place, that he is the bishop of the catholic Church itself first, and secondarily of individuals. On the one hand, because he is no less the bishop of the catholic Church than Ambrose [was] of the church of Milan, he would be much less if he were not the bishop of the whole, but only of the individual members. On the other hand, because the proper act of a bishop, which is to superintend, looks to the good of the catholic Church itself first and secondarily to that of individuals, as is obvious from the fact that the pope is bound to this on pain of mortal sin by the mere fact of his being pope. It is obvious, after all, that powers are known by the acts which are proper to them.

Nor do I see any answer to this, unless it were to be said that the pope has this act [in his power] in so far as he acts for the sake of the universal Church, to which this act belongs, and that it belongs to the pope from its commission. But this response can be understood in two ways. First, that the pope has this act from the Church dependently, like a king appointed by the realm; and in this

sense it is false, because the pope then would be the vicar of the Church, and not directly [vicar] of Jesus Christ Himself; and that was demonstrated to be false and will be shown more fully. Second, it can be understood that the pope has the act from his office, supplying what would belong to the Church if it were not so subject. In this sense, the answer is true; but it does not invalidate the argument, as is obvious.

I said in the same Chapter vii that the pope has supreme power in God's Church, and I deduced from this that he is superior to the universal Church.

An objection can be made by interpreting that statement [to mean] that the power of the pope is called supreme in respect to particular powers, but not in respect to the power of the community of the whole Church. [Our opponents] have said, second, that it does not follow from the fact that supreme power is placed both in the pope and the Church that there are two supreme powers in the Church of God, because the pope's power exists for the sake of the Church, according to God *placed you to rule the Church* [cf. Acts 20:28]. Where one thing exists for the sake of another, there is only one, as is obvious in the *Topics*.¹⁵

I answer that the gloss cited is refuted by the great difference between "in a certain respect" and "absolutely." We asserted absolutely in respect to the pope that he has supreme power in the Church of God, as is obvious in the text cited there.¹⁶ The gloss, however, posits that the pope has supreme power in a certain respect, because [he has it] in regard to some but not to all the powers in the Church of God. It also is refuted by a literal exposition of the superlative "supreme." It can be expounded negatively and positively, as not having a superior and as being superior to every other [power]; and in both ways it contradicts that gloss.

The objection to the conclusion is worth nothing, since, if the community of the Church is so powerful that the pope is subject to it, it is necessary that the proper object of the power of the Church and the power of the pope be related proportionally as superior and inferior, like the powers themselves. This is obvious from the fact that the common good of the whole Church is the proper object of

¹⁵ Aristotle, *Topics*, III,2.

¹⁶ Martin V, *Inter cunctas*. Mansi 27:1212

the power of the community of the Church. The good of individuals is the proper object of the pope's power, logically speaking, because, according to [our adversaries], his proper power is concerned, first, with individuals, and the pope does not involve himself with the common good of the whole [community] except when he uses the power of the Church [acting] as its instrument. Therefore, most truly there would be two powers, supreme and subordinate at the same time, which is ridiculous.

The statement, again, that the pope's power exists for the sake of the Church, is a truism; and it avails nothing. But, according to their hypothesis, it would not exist for the sake of the Church in the same sense, formally understood, as the Church's [own] power does, since the latter [exists] for the sake of the Church collectively, the former, however, for its sake distributively. Therefore, since the rule [cited above], based on the unity of the object, is not an obstacle, and [one] power does not exist on account of [the other] but subordinate to it, I do not see how the rule from the *Topics* need create any difficulty.

I said in the same Chapter vii that the pope is the proximate and direct vicar of Christ; therefore, he has no power on earth greater than he is. Hence I inferred that the Church does not have ordinary authority directly from Christ; and the pope does not have authority through the mediation of the Church etc.

An objection can be made by interpreting [this statement as saying] that the pope is called the direct vicar of Christ because the power of his vicariate was instituted directly by Christ and granted to the Church, and not because he may have it from Christ without the mediation of the Church, so that the pope is the direct vicar of Christ, just as, according to the apostle [cf. Rom. 13:4], kings, who are God's ministers in the punishment of malefactors, are, nevertheless, appointed through the mediation of the people.

I answer that this gloss is refuted by the difference between an intermediary in instituting a power to rule¹⁷ and one in [actually] ruling. These differ like heaven and earth. Being direct or mediated vicar is not understood according to appointment alone but according to the exercise of power. I offer a few examples for the sake of brevity: Christ instituted episcopal and priestly power without an

¹⁷ Literally, "principate"

intermediary; He instituted the power of minor orders, the subdiaconate among them, through the mediation of the Church. In the latter there is an intermediary in the process of institution; in the former, not. The pope institutes a legate, who commits his role to another. The legate rules under the pope without an intermediary. The legate's vicar, however, [rules] with an intermediary in ruling; for his rule depends on the legate's power to rule and not just on his own election. From these points it is obvious what kind of intermediary is excluded when anyone is described absolutely as the immediate vicar of some prince, namely, an intermediary in ruling, as is obvious inductively.

Therefore, since the pope is described absolutely and without any limit as the proximate and direct vicar of Christ, an intermediate power to rule between Christ and the pope, inferior to Christ and superior to the pope, for whose sake the pope acts, is excluded. If there is such an intermediate power, as they admit, when they posit the whole community of the Church as such a power, although the pope could be called the vicar of Christ, nevertheless, he could not truly be called the direct vicar of Christ simply and absolutely, but the vicar of the Church directly and [the vicar] of Christ through its mediation. Immediacy of institution of the pope's power by Christ does not make the pope the direct vicar of Christ except in a certain respect, namely, in respect to the institution of his power, just as any bishop can be called the direct vicar of Christ because any [bishop's] power is instituted directly by Christ. It is obvious, however, that the determination of the Church and the holy fathers had a different intention in asserting that the pope is the direct vicar of Christ. Therefore our argument holds good in its [full] strength.

The answer to the further point concerning the comparison with kings is that they are not called God's proximate and direct ministers, but they are, undoubtedly, God's ministers when they act on behalf of the community. It is far otherwise in the case of the pope, who does not act on behalf of the community but for the sake of Jesus Christ.

You must know that between a king appointed by the people, like Saul, so that he is made [king] on the basis of natural law, and a king given by God, like David, and a pope made by Christ, like Peter, and a pope elected by the Church, like the others, there is

such a difference in representing the people that a king, whether appointed by the people or given by God, represents the people and its power. For, although they differ among themselves in their appointment, because one is raised up by the people, the other by God, nevertheless, they do not differ in the nature of [their] office and power. For, just as a natural organ, like a hand, if it exists miraculously by the power of God, is the same as if it existed naturally, so a political organ, like a king, when he is appointed by God, is the same as if he were appointed by the people; and, therefore, in whichever way he was appointed, he represents and exercises their power and is said to act on their behalf, and not on God's directly. The pope, however, whether appointed directly by Christ or through the ministry of the church as intermediary, is of the same nature and power; and he does not represent the power of the people of the Church, nor the people as such, but the Lord Jesus Christ directly. And he acts directly on His behalf alone.

The reason for the difference between king and pope is that royal power is in the people first by natural law, and it is devolved to the king from the people. Papal power, however, is above nature; and, by divine law, it is first in only one person, not in the community, Christ having established the form of the supreme ecclesiastical government in only one person, when He said, *Other sheep I have. . . and, Them also I must bring, and there shall be one fold and one shepherd* [John 10:16]; and, to the same purpose, settling such a form upon the person of Peter and his successors in perpetuity, He said to him, *Feed My sheep* [John 21:17]. Therefore, the pope is the vicar of Christ alone, and not [the vicar] of the Church; and, therefore, it was defined by the Church that the pope received his universal office in blessed Peter, as is obvious from what was cited in my earlier book etc.

I also stated this conclusion in Chapter vii, that the pope's power is superior to the universal Church and the general council, as distinct from the pope.

An objection is made, first, from the authority of Augustine in the letter to Glorius, Eleusius and Felix the grammarian etc.,¹⁸ where, speaking of the deposition of Caecilian, bishop of Carthage, he says, "Look, let us suppose that those bishops who judged at Rome were

¹⁸ Ep. 43: PL 33:169.

not good judges. There still remains a plenary council of the universal Church, where a case could be brought against those judges, so that, if they were shown to have judged badly, their sentences could be annulled" etc.; and he included Pope Melchiades among the bishops judging at Rome, as is obvious from that epistle. From these words it follows manifestly that an appeal lies from the pope together with a local council to the universal council; and their sentence can be annulled.

Second, on the authority of the eighth synod, canon 21, found in c. *Diffinimus* [D. 22 c. 7], where "The universal synod is bound to hear with due reverence any question that arises about the Roman see and to proceed with it; but not to pronounce a sentence on the Roman pontiff boldly." It is obvious from this that, although the synod may have to define every question about the Roman see, nevertheless, it should do so with reverence on account of its eminence.

Third, on the authority of Pope Damasus, which is placed among the epistles of Ambrose,¹⁹ where Damasus says, responding, "Since the judgment of the Council of Capua was to the effect that judges from the same region should be granted to Bonosus and his accusers . . . we perceive that the form of judging could not be a matter for us, for, if the synod were still in being, we could decide rightly concerning those things which your series of documents enumerates. Therefore, it is for you who receive this judgment to impose a sentence. . . You, whom the synod has chosen to examine [the case], have received authority to act on the synod's behalf." And below, "You, as we have written, decree on behalf of the whole synod; it is not for us to judge as if by the authority of the synod." From these points it is quite obvious, first, that the pope says that he could not take cognizance of this case, which he could do if the synod were still in being, that is, it had delegated none [of its power]. Second, [it is obvious] that the pope admits not only that the council is superior to him in judging, but that those deputed by the council, in that case for which they were deputed, were [superior] too.

Fourth, on the authority of c. *Si duo* [D. 79 c. 8], where it is said that, if two contend for the papacy, the council is the judge; there-

¹⁹ *Epistola de causa Bonosi* [Ep. 66]: PL. 16.1223. Cajetan is reusing an incomplete quotation in the 1512 edition of Almain's work.

fore, it is superior to both. No one is the ordinary judge of another unless he is superior in jurisdiction.

Fifth, by reason: when the pope and the remaining prelates judge something etc., they act as the Church's ministers, not just in regard to a purpose, on the Church's behalf, but effectively, by the Church's authority; therefore, authority is in the Church first. The antecedent is proved, because they are said to act according to the Church's intention. The conclusion is manifest. It is confirmed, because the prayers and indulgences of which an excommunicate is deprived are not those of the prelates but of the Church. This is confirmed again because, just as God, making the human race, gave the power of civil rule for man's natural end not to one man but to the community etc., so, regenerating the same [race] for its supernatural end, He gave the power of spiritual rule for that end to the community of the Church etc. Just as He sometimes preempted the people by giving them a prince, like Moses, so He preempted the Church by giving it Peter. This is confirmed, third, because otherwise the ecclesiastical polity would not be as well ordered as the civil one, for it can provide for itself when a prince abuses power to its destruction. The Church, however, could not [do so], unless it were superior to the pope. This is confirmed, fourth, because the pope would be more wretched than others if he could not be restrained from evil. This is confirmed, fifth, because the pope is a son of the Church, and thus [its] subject. The antecedent is obvious from Ambrose in the *Liber de symbolo*,²⁰ "He will not have God as Father there [in heaven] who has refused to have the Church as mother." The conclusion is obvious from, *A foolish son is the sorrow of his mother* [Prov. 10:1].

Sixth, again by reason: if the pope has power over all the rest of the Church collectively, therefore, he can exercise any act of jurisdiction over the whole, even against its will; but this is false, because he cannot excommunicate the whole [Church] or place it under interdict, nor bind it to something against its will, as is obvious from Augustine's words in c. *In istis* [D. 4 c. 3], "Laws are instituted when they are promulgated; they are ratified when they are approved by the behavior of those observing them."

²⁰ Actually Quodvultdeus, Sermon 3. *De symbolo*, xiii: C.C. 60 363-8

Seventh, because ecclesiastical power in the Church is earlier in time than it is in any supreme pontiff, because what was instituted and conferred on the Church in Matthew 18[:18] was given to Peter in John [21:17]. Therefore, if Christ had not instituted Peter as pope, the Church could have done this by committing its power to him. Nor could it take it away from him except for a reasonable cause, just as the people can with respect to the king.

I reply: it does not follow from that text of Augustine²¹ that the council is superior to the pope; rather the argument from this fails in two ways. First, because it equivocates concerning the council, for our question concerns the council distinguished from the pope or apart from him, a headless council. Augustine, however, speaks of the universal council with the pope, as is obvious from this, that he posits the presence of judges, that is, the bishops who judged. Now it is obvious that it is not permissible to argue from the council [with the pope] to a headless council. Second, [the argument] fails because superiority is inferred from the fact that an appeal still lay to the universal council. Here is a fallacy in the consequent. Such an appeal may lie on account of many causes – exclusion of suspicion, fuller discussion, greater wisdom, personal consultation and anything else of this sort, as is obvious from the regular custom of appealing to the same judge, such as the pope, when more fully informed,²² and [his] treating the case through other judges etc. This is consistent with Augustine's literal meaning, where, on account of the presence of all the prelates, the case could have been discussed in such a way that even the judges who judged elsewhere first and in Rome second, being personally present, could have compared reasons for the judgment; and [a decision] could have been reached by the universal judgment of all, and also the previous erroneous judgment could have been annulled. No authority entirely greater than that of the pope is required for any of this; but his [authority] suffices with weightier discussion, wisdom etc., as we see daily. The authority of greater numbers lies in all these respects in the universal council, and greater solemnity of judgment, all of which seem to make its sentence greater than any objection.

²¹ See above n. 12.

²² Appeals from the pope's ruling to that which he might "issue when better informed" were common in this period.

To the second [argument], from the authority of the eighth synod,²³ I reply: the synod's words are interpreted wrongly to say that what it rejected was the manner of judging the pope – that is, boldly – and not the judgment itself. That this interpretation is mistaken is proved, because “boldly” either implies the vice of boldness or implies authority. If the first, since that [vice] should be avoided in respect to anyone, and not just in respect to the pope, the synod's decision, that it should not judge the pope viciously or out of passion etc., would be ridiculous. If the second, the contrary of the suggested interpretation would follow. Therefore, the literal sense is that imposing a sentence on the Roman pontiff is the vice of boldness. Indeed, that aforesaid rejection rejects not just the manner but the whole [process]. Therefore, to say “but not to pronounce a sentence on the Roman pontiff boldly” signifies that it can only impose a sentence on the Roman pontiff boldly. In the same way, when we say that it is licit for us to judge concerning manifest things, but not to judge rashly concerning things hidden in the heart, we do not intend only to deny the manner of judging – namely, rashly – but we intend to determine that judgment concerning things hidden in the heart is rash in itself. Therefore, “boldly” characterizes the nature of the judgment of the pope, just as “rashly,” in the example given, [indicates] the nature of the judgment of the heart. Therefore, the opposite of what our opponents intend follows from this authority.

As a sign of this the synod says that hearing and proceeding with reverence in a question concerning the pope belongs to it; and it added that negative [point] concerning the sentence, which it would not have added if even a sentence with reverence belonged to it. Indeed, that distinction in the confuted interpretation shows the defect. When you read this, remember that moral discourse is concerned with what happens as a rule. In a case of obstinate heresy involving the pope, to be sure, the synod's judgment deposing the pope would be free from audacity.

To the third [argument], from Damasus' authority,²⁴ the answer is that neither of the things deduced from that authority follows. For in those words he does not deny that the power, but that the

²³ Cited above p. 233.

²⁴ See above n. 12.

form of judging could belong to him. He gives as the reason for this denial not his lack of power or his subjection but impropriety, as is obvious from those words. This is familiar to princes. Even if he had said that he could not judge, he would have spoken the truth and not departed from the custom of princes, who deny that they could do what they would do improperly if they heard [an appeal]. Now it is obvious that it is improper to annul the decisions of a council, even a provincial one: how much more [those of] a general council, whose decrees bind even the pope in the forum of conscience no less than his own do. Therefore, according to the sacred canons, it behooves the Roman pontiff especially to observe the statutes of the fathers. If you have taken [proper] note of the same authority, it tells against those arguing to the contrary, in so far as it indicates the degree of his excellence that it does not befit him to judge as if by a synod's authority.

To the fourth [argument], from the authority of c. [*Si duo*, D. 79 c. 8], the answer is that it is granted freely that a pope whose title is uncertain is subject to the council. When two men with uncertain titles are contending, the Church judges; but, if one's title is certain and undoubted, the Church would not judge but would lend support by obeying the certain one, condemning the antipope etc.

To the fifth [argument], that prelates are the Church's ministers, the answer is that prelates are called Christ's and the Church's ministers. Christ's effectively, because they have their power from Him effectively and as His representatives, and yet, mystically, because all prelates are, as it were, members of Christ, according to Augustine on John,²⁵ "If the Church's leaders are shepherds, how is there one shepherd unless because all of them are members of one shepherd?"

They can, on the other hand, be called ministers of the entire Church (that is, including the head, which is Christ) in two ways: effectively, by reason of a part, the head, from which the prelates have authority, and integrally, because they are members of the rest of the Church apart from the head, not as representatives but as integral parts of the mystical body. We say these things speaking of the Church's prelates generally, not of this one ordained and

²⁵ In *Joan.*, tract 46 CC 36.401.

appointed by that; for in this case the question would be concerning that other, and so of others

From these points it is obvious that the Church's prelates properly speaking are not the Church's ministers effectively except by reason of the head, Christ, and, consequently, are not ministers of the Church as a mistress, except by reason of the head; for this reason Paul said, *If I pardoned anything. . . in the person of Christ* [2 Cor. 2:10], and again, *Let a man so account of us as of the ministers of Christ* [1 Cor. 4:1]. From the fact that the Church's ministers are said to act according to the Church's intention, nothing follows but what has been said, namely, that they act according to the Church's intention in [its] head and diffused throughout the body by that head. However, the phrase "according to the Church's intention," may be understood as "according to the intention proper to ecclesiastical office"; for the sacraments are said to be celebrated and conferred with this intention.

To the first confirmation [p. 234], that prayers are not those of the prelates but of the Church, the answer is that it is false [to say] that the prayers are not those of the prelates as stewards, although they are those of the whole Church as proprietress; but this proves nothing but that the prelates have power from the whole Church by reason of the head. Therefore, the entire argument fails on account of ambiguity in the proposition between the whole Church and [the Church] distinguished from the head.

To the second confirmation [p. 234], concerning the simile of mankind's condition and regeneration, the answer is that it is absolutely obvious that the assumption is false and that God instituted [the two things] differently. For, in regard to the natural end, He conferred power on the community, and not on one man; however, in regard to the supernatural end, He gave power to one, and not to the community. He appointed first Jesus Christ, in so far as He is a man, as prince and head of the whole Church, as is obvious, and not by preempting, as in civil matters, but by instituting, as is obvious.

You must know that the argument fails because He did not deal with the primary order of human regeneration as He did with the primary order of the human condition; but He turned to the secondary order of the Church, which exists during the absence of the prince, *Who went into a far country, to receive for himself a kingdom,*

and to return [Luke 19:12]. That delegation [of power] clearly is incomplete: because the primacy to be conferred upon [the Church] must be in due proportion to the primacy [of Christ]. However, the secondary order in the Church, if it accords with the nature of the principal, [Christ,] seems unquestionably [to be] the best. Thus power must be located in the prince's one vicar, not in the community; and it was located by that prince in Peter. Thus it is obvious that the prince did not preempt the Church; but, bestowing His own nature upon the order of the spiritual government, He located His vicariate in Peter and his successors.

To the third confirmation [p. 234], [the reply] already is obvious: the best provision was made for the spiritual polity in its natural prince, Who cannot sin; however, the best provision also was made in the ordination of His vicar, since a wise disposition was made. For a supernatural government, which the papacy is, demands for itself, by its very nature, a supernatural defense and remedy, which the Lord Jesus Christ instituted by authoritatively reserving deposition [of the pope] to Himself and [granting] to the rest of the Church the ministry of prayers. This is a wise and efficacious remedy, as will be shown below in its place. Therefore, it is false [to say] that the Lord Jesus Christ ordained the Church's polity less well, even under His vicar, than a civil polity in human affairs, since each was given not the same but a proportional remedy against a bad prince, so that the Church can protect itself against him and depose him with its proportioned vows and works – prayers, fasts, alms; these are more efficacious than other secondary causes, because they are superior to the rest and proper to the Church's universal well-being, but *All men take not this word* [Matt. 19:11].

To the fourth confirmation [p. 234], the answer is that one who has been received directly into the care of the living Christ, Who takes special care of him, is not more wretched than anyone else, except by reason of universal servitude, extreme peril and so on. Such, however, is the pope, who cannot be punished with a coercive penalty but is bound to work freely from love. It is a sort of beginning of felicity, and not of misery, to be in a state in which a man, while still mortal, is placed “not like a servant under the law but like a free man established in grace,”²⁶ as happens in the papacy.

²⁶ *Regula Sancti Augustini* PL 33 965

To the fifth [p. 234], the answer is that the pope, in so far as he is an individual person, is a son of the Church, because, like others, he was regenerated, nourished and instructed by her; however, in so far as he is the pope, he is the son of the whole Church, that is, with its head, and the father, not the son, of the rest of the Church. But in these and similar points take heed, you to whom these and similar objections are made, lest ambiguity concerning the word "church" deceive you, so that you take those things which are said concerning the whole Church, either with the head or with the one acting on the head's behalf, as applying to the community of the Church apart from the head, for these will deceive you.

To the sixth principal argument [p. 234], the answer is, with the apostle, *All things are lawful to me, but all things are not expedient* [1 Cor. 6:12]; and again, *I can do all things, but all things do not edify* [1 Cor. 10:23]. It is granted, therefore, that the pope can, on the basis of the authority of his power, exercise an act of jurisdiction even over the rest of the Church against its will; but it would not be expedient if it did not edify. Nor is it valid to argue that he cannot excommunicate it, therefore, he cannot exercise any act of jurisdiction over it against its will, as is obvious.

To the proof from Augustine's authority [D. 4 c. 3] the answer is that it rather proves the opposite. If laws are instituted when they are promulgated, the pope, promulgating the law to the whole Church, instituted it without its consent; therefore, he alone can institute a law over it. Stability, however, depends on the consent of those observing it, on account not of authority but of execution. This is proved from the fact that even the decree of an entire universal council is confirmed by the consent of those observing it, so that it does not bind when it is weakened by the dissent of those [not] observing it; nevertheless, no one doubts that a universal council gives the durability of authority to its laws. Instability of laws arises from the dissent of those [not] observing them, even from the legislators themselves negatively, in so far as they dissimulate by tolerating [practices contrary to them] and implicitly revoke what they have done. Rightly so, because law, as is said in c. *Erit* [D. 4 c. 2], should be suitable to the country, the place and the time.

To the seventh [p. 235], the answer is that the assumption is false, for ecclesiastical power originally was in the first supreme

pontiff, the Lord Jesus Christ, Who is *an high priest of the good things to come*. . . *having obtained eternal redemption* [Heb. 9:11–12]. Also it is shown to be false that the Lord gave the Church ecclesiastical power through those words which are found in Matthew 18[: 18], although He promised to it [power] over its subjects, as was discussed at length above. Finally, the ambiguity already mentioned occurs by shifting from the Church to the Church apart from the head. As far as the other things that are inferred in the argument – namely, that the Church could have instituted Peter as pope, the degree of their falsity is obvious from what has been said, because, if the Church ever could establish the papacy in one man and his successor, as Christ did, it also could establish it in a triumvirate or anything of this sort, because it is the right of the same person to establish and to change the establishment according to place and time.

[Concerning Chapter viii]

I said in Chapter vii that the Council of Constance, at the early stage when it issued those decrees concerning the power of the synod, was not a true council of the universal Church and that the one at Basel erred in following it.

Two objections are made, first, that I blasphemed. Second, that the Council of Constance under the obedience of John XXIII was a true universal council, because it succeeded the Council of Pisa, in which the unity of the Church had been [restored] by the deposition of both popes, Gregory XII and Benedict XIII, and the election of Alexander V, who was succeeded by John XXIII, who summoned the Council of Constance.

I reply, first, in regard to the Council of Constance. If I blaspheme, why was Gregory XII, who expressly refused in [his] acts for the union of the Church to recognize the council at the time as that [general] council, held to be not a blasphemer but a man of peace and a lover of the Church, as is obvious in the records of the same council in Session xiv.²⁷ Why, in the pacts of union and the act for the union of the Church, was Benedict XIII's obedience, wishing and making a rejection of the council at that time, held not

²⁷ COD 420–1.

to be blasphemous but eager for catholic unity, as is obvious from Sessions XL and XLII.²⁸ Why was Emperor Sigismund, who presided in the council in order that the rejection of that council might be guaranteed,²⁹ held not to be a blasphemer but the Church's defender? Why, finally, did the Council of Constance itself at that time, when it denied in fact that it was a council not once but twice, first in accepting the emperor's presidency and being authorized as a council by Gregory XII, second, in agreeing to be summoned by Benedict XIII's obedience and to summon [that obedience], not blaspheme? If scandal should be permitted from an individual person rather than that the truth should be abandoned, how could a universal council guided by the Holy Spirit have abandoned the truth by denying itself in fact, rather than being willing to permit a scandal that already had arisen?

From these things rightly considered, then, it is obvious that that council did not regard itself as a certain and undoubted council at that time; and, therefore, it admitted denials of this sort, taking pains so that one certain and undoubted council with an undoubted head might come to be, as there was at last. In what, therefore, do I err if I have held things doubtful and uncertain to be doubtful and uncertain? I said nothing else in [my] opinion. For it is obvious that things doubtful and uncertain should be rejected in favor of true authority, and it is wicked to attribute the authority of truth to them.

To the second objection, concerning succession to the Council of Pisa, the answer is that it is not even obvious that it was a true and undoubted council, as is obvious, leaving other things aside, from two things. First, because that assertion would renew the old schism; for what else is saying that this Council of Pisa with Alexander V was certain and undoubted than certainly and undoubtedly to condemn Gregory XII and Benedict XIII with their obediences? This is to return to that schism. Second, because that Council of Constance under John XXIII's obedience, although it may have believed itself to be a universal council succeeding that at Pisa,

²⁸ COD 433, 435. But see, more rightly, Sessions XXIII and XXIV in *ibid.*, p. 435.

²⁹ Sigismund's neutral role permitted each obedience to treat the council as newly begun with its arrival. Otherwise the followers of one of the pretenders to the papacy might have thought themselves condemned by joining an assembly called by a rival pope.

nevertheless, did not bear witness by its acts to regarding the latter as a certain and undoubted [council], as is obvious from what has been said.

There is the further point that it defined without the pope; and, therefore, even if it had been representative of all the rest of the Church, it could have erred. Nor would it have been a perfect general council absolutely, as is obvious in my book.

In regard to the Council of Basel, I endorse the reply of the universal Church, which honored Eugenius IV, who celebrated the universal Council of Florence, even [assembled] from the eastern church, concerning a matter of faith¹⁰ etc. If I blasphemed, who excuses the Church from blasphemy?

[Concerning Chapter IX]

I said in Chapter IX, glossing Augustine's words that Peter received the keys personifying the Church and the like, that they were said in this sense, that they were given to the perpetual office of head in Peter and his successors; and, therefore, it is said that Peter received them personifying the Church.

An objection is made that this is not the sense intended by Augustine, because it would follow that the keys were given to the Church finally and not formally, which is the opposite of what Augustine means there.

I reply: the conclusion does not hold. Indeed it follows from that sense that the keys were given to the Church formally, both because what is given to the head formally truly is given to the body, to which that head belongs formally, and because what was given to the head and the body formally, although to the body through the mediation of the head, clearly was given to the whole formally. That is how it is in this case, as is obvious. But the argument over and above this fails by ambiguity concerning the Church, between the whole Church on earth, head and body, of which Augustine is speaking, and the Church taken for the body alone, as a certain integral whole, whose vicar the pope is, which is fictitious.

The sense indicated by me is confirmed by the fact that I have interpreted Augustine from Augustine himself. He says in the book

¹⁰ The procession of the Holy Spirit

De agone Christiano,³¹ "Not without a cause did Peter among the apostles personify the catholic Church. The Church's keys were given to it when they were given to Peter; and in him is said to all, *Lovest thou Me? Feed My sheep* [John 21:17]." It is obvious that the papacy was given to Peter apart from the others both for himself and for his successors by these words, *Feed My sheep*. Augustine made the same judgment concerning this act and the reception of the keys. Therefore, Augustine was saying that he personified the Church by reason of its leading and perpetual office.

I said in the same chapter that the pope cannot err with a judicial error concerning the faith, although he can err personally, because to him belongs final determination concerning the faith, as the *Decretum*³² [says] first and as Saint Thomas,³³ afterwards, says and proves by the authority of Cyril and Maximus. An objection can be made, first, that two supreme pontiffs made contrary decisions in matters concerning the faith; therefore, one or the other of them erred with a judicial error about the faith. The assumption is obvious in the case of John XXII and Nicholas III, one of whom determined judicially that Christ and the apostles owned nothing in common or individually, the other, the opposite, as can be seen in their additional constitutions.³⁴ Second, because Innocent III and Celestine [III] made contrary decisions concerning the proposition, "When one spouse goes over to heresy, the other, who remains in the faith, can enter upon a second marriage," as is obvious in c. *Quanto* [x 4.19.7] and the gloss there. Third, because some issued decrees contrary to the gospel, like Pelagius [II], who ordered that subdeacons in Sicily should abstain from the wives whom they had wed when in minor [orders] or relinquish their office. Blessed Gregory I, his successor, retracted that decree, because it was impious and contrary to the gospel, as is obvious in the text and gloss of c. *Ante triennium* [D. 31 c. 1]. Now just as he could decree judicially contrary to the gospel, so he could define. Fourth, because it would follow that the supreme pontiff could not become a heretic on account of propositions not yet decided upon, as was the article concerning the procession of the Holy Spirit from the Son. The

³¹ xxx.2: CSEL 41.134-5

³² Cajetan may be citing C. 24 q. 1 c. 12

³³ *Contra errores Graecorum*, pars altera, c. 36 *Opera* (Rome), vol. 40A, pp. 102-3

³⁴ Extrav. Ioan., tit. 14, Nicholas III, c. *Exut qui seminat* [vi 5.12.3]

consequent holds, because he could not be pertinacious against his own decision. It also would follow that even a decision of the supreme pontiff alone would bind his successor. It would follow, again, that a truly heretical pope could be judged wrongly, because he could decide that objections against him must be understood in some sense consonant with what he had asserted. Fifth, it is argued *ad hominem* that I contradict myself in that same book, for it is stated at the end of Chapter IV that John the Evangelist's pronouncement would have prevailed over that of Pope Clement [I] concerning the doctrine of the faith, and now it is said that the pope cannot err in a judgment concerning the faith. These things are contradictory, because John's pronouncement would not have prevailed; but Pope Clement's pronouncement would have availed as much as John's, indeed more, because the ultimate decision concerning the faith, according to what has been said here, belonged to Clement, just as it would have belonged to Peter if he still had been alive. Sixth, because "the four principal general councils against the four heresiarchs, those of Nicaea, Constantinople, Ephesus and Chalcedon, would have been assembled in vain." The consequent holds, because "the pope's decision alone would have sufficed. Indeed, according to [our] adversary, the pope alone has as much power in defining as he and the rest [of the Church] together."³⁵ Seventh, from Ockham,³⁶ because Innocent III, as is found in c. *Per venerabilem* [x 4.17 13], says, "Since Deuteronomy is interpreted as second law, it is proved from the force of the term that what is decreed there ought to be observed in the New Testament." These words, if they are understood universally according to the literal sense, smack of heresy, because the ceremonial precepts there in [Deut.] 13-14 are not to be observed. If, however, they are understood mystically, they say nothing specific about Deuteronomy, because all things must be observed mystically, as we read in c. *His ita* [D. 6 c. 3]. Eighth, from the same [author, Ockham]³⁷ because some supreme pontiffs are found to have laid it down that they have supreme power in things temporal; others, however, the opposite. Ninth, because it is not probable that God committed the ultimate

³⁵ Cajetan is quoting Chapter x of Almain's treatise; above, p. 181.

³⁶ *Octo questiones de potestate papae*, q. 1 c. 9. *Opera politica*, ed. H. S. Offler, vol. 1 (Manchester, 1974), pp. 30-41.

³⁷ Cajetan is citing Chapter x of Almain's treatise; above, p. 181.

decision about the faith to a man capable of erring in those things which are of the faith.

Now for my response. To the first [point]: a false assumption is being made – namely, that one pope, Nicholas, determined judicially that Christ and the apostles owned nothing in common. For manifestly Nicholas, as is obvious from c. *Exit qui seminat* [vi 5.13.3], says, “For Christ performed and taught the works of perfection. He also performed acts of weakness, just as sometimes is obvious in the flight [into Egypt] and the purse [carried by Judas];³⁸ but, remaining entirely perfect in both respects, [He did both] in order to show Himself to the perfect and the imperfect as the way of salvation.” Thus it is absolutely obvious that Nicholas asserted that Christ owned something. The conclusion is valid: Nicholas asserted that Christ had something so that He might show Himself to the imperfect as the way of salvation; therefore, he asserted that Christ owned something. So John XXII, who determined that it was heretical to hold that Christ and the apostles owned nothing in common, because it contradicts sacred Scripture, determined a truth of the faith, the contrary of which Nicholas had not determined.

To the second [point], the answer is that neither of those pontiffs determined definitively. For Innocent III says of Celestine in c. *Quanto* [x 4.19.7], “Although one of our predecessors seems to have thought otherwise”; and he adds concerning himself, giving the opposite answer, “We do not believe that in this case the one who is left, while the other one is living, could enter into a second marriage.” The very words used there, “seems to have thought otherwise,” and, “we do not believe,” show that they were not uttered to define in a matter of faith.

To the third [point], the answer is that Pelagius [II], if that is what he decreed, did not decree contrary to the gospel but in addition to it. That is quite obvious from the fact that this statute put its observers either in the way of a good [act] of supererogation, if they were continent, or in the way of avoiding evil, if those who were not continent suspended themselves from office, as a certain subdeacon did. It is to be noted here how ill repute increases gradu-

³⁸ This concession to human weakness featured prominently in controversies over the poverty of Christ and the apostles during the later Middle Ages.

ally as it passes from mouth to mouth, for Saint Gregory, speaking of this statute, says, nevertheless, both that a deacon made this prohibition (by the pope's authority, however), as is obvious from c. *Multorum* [C. 27 q. 2 c. 20], and that it seems harsh and inappropriate to him, as is obvious from c. *Ante triennium* [D. 31 c. 1]. The gloss there adds that Pelagius did this and that this constitution was iniquitous. It adds, arguing more fully, that the Roman pontiff's decree was contrary to the gospel.

To the fourth [point], the answer is to deny the conclusion, that the pope could not be a heretic in things not [yet] decided. For, if the man who was pope had held obstinately that the Holy Spirit did not proceed from the Son, if that had been determined by the Church, he would have been a heretic. That the Church's determination was made by him or someone else is accidental; for the established forms *per se* must be respected, without giving way to those things which are accidental in any science. The reply to the second conclusion is obvious from this. For one pope's determination in a matter of faith binds *per se* all persons in the Church, of whom acts of faith are required; and so the persons both of [the pope] himself and of his successor are bound to embrace a determination concerning the faith once it has been made. To the third conclusion, the answer is that, when what was imputed to the pope as heresy had not yet been decided by the Church, and he did not hold this [opinion] obstinately but defended it as consonant with sacred Scripture and the faith of the Church, he would not be a heretic formally, even if he erred materially in those things which are of the faith. Therefore, it does not follow that the pope could be judged wrongly for heresy in a case in which he is to be judged for heresy formally; for in these matters interpretation in this or that sense does not have a place.

To the fifth [point], the answer is that there is no contradiction in my words as cited. For it is quite consistent [to say] that neither John nor Clement could err, and yet that one could be superior to the other. There can be two entities, both subordinate and each entirely right, as is obvious to everyone in the case of the universal Church at the present time and sacred Scripture. However, in saying that John's pronouncement would have prevailed over Pope Clement's, I said nothing other than that Clement's pronouncement was subordinate to John's. To the further point, that the opposite

of this would follow, the conclusion is denied. For, when it is said that final determination concerning the faith belongs to the pope, it is understood in his order and grade – namely, under sacred Scripture, whose author is the Holy Spirit. Now because John the Evangelist held the place of sacred Scripture in the doctrine of the faith, just as his gospel does today, therefore, it does not follow that one must abide by Clement's sentence rather than John's; but vice versa. From this then is the obvious reply to the simile adduced by arguing from Clement and Peter: that these cases are not the same, because Peter, by virtue not of the papacy but of the apostolate, held the place of sacred Scripture, just as his epistles do now; and I explained this sense expressly in that book at the place cited, saying, "John's pronouncement would have prevailed over Pope Clement's in the doctrine of faith [and morals], just as John's gospel would now prevail over the pronouncement of any pope and of the whole Church."

[In reply] to the sixth [point], I deny the conclusion, that those principal councils assembled to deal with a matter of faith would have been vain. For councils are assembled to deal with a matter of faith not for the sake of fuller power, but of greater extent of power, and for discussion and comparison of views among all of those wise in the faith, and also in order to have judges undoubtable and accepted by everyone beyond any objection.

Again, the proof of the conclusion proceeds as if the council were assembled on account of having exclusive full authority, which is false. For, although the pope alone has authority just as full as he has together with the rest, yet he does not have authority of such extent, such wisdom, such undoubted acceptance by all (as is obvious from those taking the opposite view), such solemnity, which commonly affects human minds very much indeed, not of such goodness and grace before God, which carries great weight with the multitude of men to persuade them that it is ruled by the Holy Spirit and cannot err. It is necessary that those things which affect the whole Church in its individual members should be done so that they are most easily acceptable to all; and universal councils, especially celebrated by worthy prelates, are very worth while for this purpose.

To the seventh [point], the answer is that, because there are two divine Laws, Old and New, and the New is second in order of

generation, therefore, the term "Second Law" is said to befit the New Law from the force of the word; and Innocent [III], in c. *Per venerabilem* [x 4.17.13], drew the argument from the appropriateness of the term. He said this expressly lest it be understood that he was reaching a conclusion absolutely, rather than on the basis of the force of the word. This diminishes the argument, rather than adding [to it], as is obvious, since many things are concealed within a word. Therefore, he intended, on the basis of the appropriateness [of the word], to show that the commands in Deuteronomy should not be observed literally but with due regard to what is suitable in the era of grace, as might be expedient to time and place. Accordingly, he, taking one judicial mandate from Deuteronomy and treating it not literally but according to what was appropriate, expounded it in regard to Peter's priesthood. Nor is it an impediment that all things in the Old Testament can be observed in this way; it is granted that he intended nothing specifically about Deuteronomy apart from the appropriateness of the word.

To the eighth [point], the answer is that, because the pope's power is directly concerned with things spiritual absolutely for the supreme end of the human race, therefore, two things befit his power, first, that it is not directly concerned with things temporal, second, that it is so with respect to things temporal ordered to things spiritual. He has this [power] in so far as all things, even temporal ones, ought to be ordered to the supreme end, without a doubt by him to whom it belongs to direct everyone to that one end, namely, Christ's vicar. The first [point] follows from the nature of his power.

It follows from these [considerations] that it can be truly concluded in regard to the pope both that he has supreme power in things temporal and that he does not have it, since both are true when properly understood. For the affirmation is true when directed to things spiritual; however, the denial is true directly or in regard to things temporal in themselves; thus nothing erroneous arises from either conclusion.

Note, nevertheless, that it is one thing to determine formally concerning the faith and another materially concerning what is of the faith. For the first implies determining what must or must not be believed; the second, determining concerning questions which arise about things that are believed. It follows that, when any ques-

tion is determined in the second way, it is not said to be determined concerning the faith, but concerning this or that matter. Therefore, when it is said that the pope cannot err in a judgment about the faith, I accept the statement only as regards judgment concerning the faith formally – that is, when what must or must not be believed is determined. None of these objections holds against this, except the first apparently; nevertheless, lest I should seem to run away, all of them have been answered one by one.

To the ninth [point], the answer is that it is not [only] probable, but it is true and agrees with human and divine reason and authority that God should have committed the final decision in regard to the faith, subject to sacred Scripture, to a man capable of error in his own person, but not as being guided by the Holy Spirit. For, since God makes no distinction between saving one man and many, and since all present in the council, considered in their own persons and their own strength, may err by judging badly about the faith through ignorance or some other defect, so that recourse is had to the assistance of the Holy Spirit, the soundness of the faith bears witness more to the assistance of the Holy Spirit and His power by means of one man than through a whole council. The latter seems to be the work of human wisdom on account of the agreement of all the fathers, while the former both is and appears to be the work of God alone. The unity of the faith also demands unity of the judge who presides over the whole Church, as Saint Thomas says.³⁹

I gave in the same chapter a reason why the pope cannot err in a judgment about the faith, because this error would be an error of the universal Church, for it is bound to follow the pope's definition in the faith, citing the authority of Saint Thomas,⁴⁰ then that of c. *Maiores* [x 3.42.3] and of Jesus Christ. *I have prayed for thee, Peter* [Luke 22:32].

An objection is made by denying that the Church is bound of necessity to believe the pope's definitive sentence in a matter of faith and saying that, just as a pope commanding something contrary to the gospel must not be obeyed, so neither should an erroneous sentence about the faith. There is no problem about Saint Thomas' authority.

³⁹ II^o II^o q. 1 a. 10. *Opera* (Parma), vol. 3, p. 9.

⁴⁰ *Quaestiones quodlibetales* (Paris, 1926), pp. 370-1: Quodl. q. 2, 16.

In regard to c. *Maiores* two points are made: first, that it is not to obtain a final decision, which must necessarily be believed, that recourse must be had to the pope, but [rather] as a matter of ordinary procedure, because, ordinarily, the Church is not assembled. Second (and this comes to the same thing) that cases regarding the faith are to be referred to the supreme pontiff so that he may summon a council; for it is his prerogative to assemble one.

To the Lord's saying, *I have prayed for thee, Peter*, the point is made that Jesus Christ prayed not for Peter's person alone, and for his successors, lest his faith should fail, but for the universal Church represented by Peter.

I reply the Church's custom and the texts of the saints refute this denial; and the experience of fire would establish the point if someone should not hold that what was determined [to be so] by the Roman church alone is heretical, as is obvious from c. *Ad abolendam* [x 5.7.9] in the text and the gloss. This response shows the extent to which they admit that they have to deviate in defending the pope's subjection to the rest of the body of the Church or the council. The further point, that one should not adhere to an erroneous sentence any more than to a diabolical command, is most true; but it is of no account. Since on this basis only a conditional truth is established, that is, if he determined erroneously; if he commanded against the gospel, he would not be heard. This is most true not just of the pope but of the holy angels, according to *If an angel from heaven preach [a gospel] besides etc., let him be anathema* [Gal. 1:8]. From these points it does not follow that the antecedent or the consequent can be true, as is obvious.

That the authority of Saint Thomas is belittled is nothing, since the Church does not belittle it. But were Saint Thomas belittled, Cyril and Maximus, who were cited there, would be belittled too. Also, what Jerome says to Damasus would have to be reckoned as of little account; the text is found in c. *Haec est fides* [C. 24 q. 1 c. 14], "If this our confession is approved by the judgment of your apostolate, whoever wished to inculcate me would prove himself unlearned, malevolent or even not a catholic, rather than me a heretic," manifestly witnessing in these words that anyone opposing a confession of faith approved by the pope becomes a non-catholic.

To the above exposition of c. *Maiores*, the answer is that it contradicts the text. For the text assigns, as a reason why recourse must

be had to the see of Peter, his truth in confessing the faith and his unfailing perseverance⁴¹ in the same on account of Christ's prayer. From this reason it clearly follows that this is why it is said that more important cases must be referred to the pope, because he was established as the unfailing judge in matters of faith. Also, because one who is certain need not be made more fully certain, it follows that the pope's sentence regarding the faith is the final determination and must, of necessity, be believed according to that decretal [*Maiores*]; and so both expositions collapse.

What is said concerning Christ's prayer for Peter can be understood properly or wrongly. Wrongly, if it is understood that Christ said that He had prayed for the Church whether with or without the pope, since He expressly said these words to Peter apart from the others, as is obvious from the context. He says, *Simon, behold Satan hath desired to have you, that he may sift you as wheat: But I have prayed for thee, that thy faith fail not: and thou, being once converted, confirm thy brethren* [Luke 22:32]. There it is quite obvious that He distinguishes the act of temptation from the prayer, as far as the fact that [all the apostles] in common were desired [by Satan], and yet He prayed for Peter individually, saying, *he hath desired. . . you: But I have prayed for thee. . .* The same thing also appears from the fact that He committed to Peter the strengthening of the others, as if to say, "I have care of you; you, however, have care of the others."

Properly, however, it is understood that the Lord prayed for Peter and the others, but in different ways. For Peter directly, for the others through Peter's mediation; for Peter in himself, for the others in Peter, their head. In this sense our point is further strengthened, as is obvious. To put it in a word, if the authority is rightly ascribed to Peter and his successors, as the said c. *Maiores* says, our point is sufficiently established, that the see of Peter cannot err about the faith on account of Christ's prayer. Since this is not true of personal error, it follows that it is verified in regard to judicial error.

I said in the same Chapter ix, expounding Jerome's [saying], "If authority is required, the world is greater than the City [of Rome]" [D. 93 c. 24], that it is true in regard to many things, like merits,

⁴¹ Literally, "indefectibility."

virtue, knowledge and, in the case in point, the force of custom etc.

This objection is offered: you interpret it according to degree of merits; whereas Jerome does not say, "If merits are sought," but, "If authority is sought," and so the reference is to degree of power, not of merits.

I reply: my interpretation is being presented less than fully, for, as is obvious in my book, I said that Jerome's saying was true in regard to many things, like merit, knowledge, etc.; and that in the case in point and according to the letter [of the text] Jerome speaks of the force of custom; whereas the objection is based on [the issue of] merits alone. For that reason I add that merits carry a great deal of weight in regard to the authority of custom, since the custom not of bad but of holy men is of the greatest authority in God's Church, and is proposed for imitation.

Therefore, even on the basis of merits, Jerome's text is best understood to mean that, because "the world is greater than the City" in the authority of custom on account of the greater merits of the world in comparison with the City; therefore, the custom of the world, that deacons are accustomed to be subject to rather than superior [to priests], must be imitated. On this interpretation, if authority were sought on the basis of the subject under discussion (namely, the place of deacons), [Jerome in this text] was bringing degree of merits, not of power, to bear on the issue of authority. Nevertheless, the ready answer to those contending about [these] words is that the world's authority is greater in extent, not in fullness, than the City's; and similarly [its] power.

I cited in Chapter ix many texts from the *Decretum* to prove that the pope has no superior on earth.

An objection is based on two glosses: the first⁴² is that this is understood in crimes not scandalous to the Church; the second⁴³ is that this is understood in ordinary procedure, because ordinarily recourse cannot be had to the supreme pontiff's superior, the council.

I reply: the first gloss is wilful and false. Wilful, because it is not supported by the authority of the Church's canons or of the saints; false, because an exception is made only for a crime against the

⁴² See Almain's reference to the Ordinary Gloss to D 40 c. 6, p. 174 above.

⁴³ See Almain's discussion of the texts in C 9 q. 3 of the *Decretum*, p. 174 above.

faith. It is obvious that from a universal with one exception made no other exception is made unless falsely. Since, therefore, the crime of infidelity alone is excepted from the universal, it remains that all other crimes are included.

The second gloss is shown to be manifestly false from the fact that the pope would be said not to have a superior even in the crime of heresy, since the council is not assembled regularly.

As for the third gloss,⁴⁴ [claiming] that these texts are those of supreme pontiffs, who, for the most part, *enlarging their fringes* unduly [Matt. 23:5], attribute to themselves what belongs to the Church, since it is not derived from the authority of theology or the sacred canons etc., let [anyone] who heeds the veneration paid in the Church to the decretals of the supreme pontiffs consider how well it sounds! How much more would the texts of many holy pontiffs be refuted thus, as is obvious [in the case] of Boniface [I], Anterius, Eusebius and other saints cited in my book! I say nothing about the many doctors in theology and law cited there.

[Concerning Chapter xi]

I said in Chapter xi that God's Church, apart from the pope, was not given papal power or power superior to papal in the gospel in Matthew 18, and that there is no such power in the Church in this way.

An objection is made that the Lord said there [Matt. 18:17], *If he will not hear* etc., by which He showed the Church's jurisdiction in operation (in the penalty of excommunication); and He added in the plural, *Whatsoever you shall bind* etc. [Matt. 18:18], by which He showed that He gave that power to the many persons contained in the term "church." Reference also is made here to the usage of the primitive Church, when *It hath seemed good to the Holy Ghost and to us, to lay no further burden upon you* etc. was defined by the Church in Acts 15[:28]. A third authority is cited, that of Gregory I, which is found in c. *Sicut sancti* [D. 15 c. 2], where he confesses that he embraces those four councils, Nicaea, Constantinople, Ephesus and Chalcedon, as [he does] the gospels; and he adds a cause, that since "they were constituted with universal consent, any one

⁴⁴ See Almain's discussion of c. *Signtificasti* [x 164], p. 173 above.

who presumes to loose what [these councils] bind or to bind what they loose destroys himself and not them." Notice that he does not say "with the supreme pontiff's consent," but "with universal consent"; nor "what the pope binds," but "what they bind."

A fourth argument for this is c. *Decrevit* [D. 88 c. 1], saying "The holy synod decreed"; not, "The supreme pontiff decreed." Fifth, c. *Nimis* [x 2.24.30], where the supreme pontiff commands by the authority of the holy council, not his own. Sixth, the Church can grant indulgences; therefore, it has the keys of jurisdiction. The antecedent is proved: because indulgences are given from the Church's treasury, not the pope's; therefore, *a fortiori* the Church can dispense. Seventh, the Church can establish canons concerning automatic sentences [of excommunication],⁴⁵ deposition and excommunication; therefore . . . The antecedent is obvious from the Council of Carthage in c. *Placuit* [C. 11 q. 3 c. 9] and is held in c. *Ex gestis* [x 3.4.2].

I reply: so that a way of responding to both these and similar arguments may be given, four points always must be kept in view in this matter; and I attribute [them to those] texts in the following way. The first is: it is one thing for the Church or the synod to have full power in respect to a part, like the head, just as a man sees, hears etc., and another for the Church or the synod to have it in respect to its totality. Therefore, one must take care not to shift the reference from the first to the second. The second is: it is one thing for the Church or the synod to have full power and another for it to have it directly from the Lord Jesus Christ. Therefore, one must take care not to shift the reference from the first to the second. The third is: it is one thing for the Church or the synod to have full power and another for it to have such power coercively, either in respect of any individual or in respect of its prince's vicar. Active potency, when it is referred to not absolutely but with respect to what is passive, as is obvious from *Metaphysics* v[12] and ix[1], is full power in the fullest when it can do all things with respect to subjects. One must take care, therefore, not to shift the reference from the first to the second. The fourth is: it is one thing for the Church or the synod to have full power; and it is another for a headless or truncated Church or synod to have it. Therefore, one

⁴⁵ Laterally *canones latae sententiae*.

must take care not to shift the reference from the first to the second. Indeed, from these four, judiciously set out, all the arguments regarding this question easily are clarified, so that nothing is left obscure. Nevertheless, I proceed to answer the arguments one by one.

As regards the Lord's words at Matthew 18[18] the answer is that, as already has been proved, the Lord does not give the Church authority there; but He signifies that it is to have power, without explaining there how it is to be held, whether in itself as a whole first or in respect of a part. We do not deny this; rather we teach [it]. Also those words in the plural do not prove the Church's authority in respect of its totality. Indeed, without [making] a decision whether the power of the Church must be understood in this or that way, either in respect of the whole or in respect of a part, the conclusion from [these] words [of Jesus] is that either mode can be confirmed, as is obvious from what was said; for it is quite obvious that what is common to the two is apart from either. Therefore, that plural can refer to a future plurality of churches or to the plurality of those meeting in the Church to confer, discuss, approve etc. and to the plurality of those pooling their texts in common. For this reason nothing against what has been said is proved from that text.

To the second [point], from the primitive Church, the answer is that it is granted freely that the Church decreed; but nothing is stated there as to whether [this was] by the power of the parts – the three apostles⁴⁶ – or of the community by accumulation in common, or in any other way (say, directly from Christ), as they falsely think. Therefore, from that authority, the others added and the like, one cannot infer the affirmative proposition that the Church or the synod has power directly from Christ, nor the negative proposition that the synod does not have power from the Lord with the mediation of the pope.

As regards the affirmative, it is obvious that, since it can be shown in many ways that the synod has power, as is obvious from what has been said, and nothing else follows from these except that the synod has power, this must be understood in common, so that

⁴⁶ Peter, James and John

it is distinct in a determinate way from individual meanings of this sort. As regards the negative, however, it is obvious on the same basis – namely, that the synod has power – that it does not have to be understood in a determinate way, so that mode of having power from the Lord with the pope's mediation is excluded, as is the case when the Church has power by accumulation, because all partial powers are from Peter, and sharing of his power with others also is from him, who alone has it from the Lord directly as His vicar, and by reason of whom alone the whole synod truly can be said to have power directly from the Lord Christ.

To Gregory's authority the answer is that the cause stated by [him] manifestly favors our purpose, since it does not give as a cause authority given directly by Christ, but universal consent, and, thus also that of the supreme pontiff himself, who is the head; and, therefore, the pope would deny himself if he denied those points, as is stated there. Also, from this argument of Gregory there follows what we have said, that the synod's authority includes the head; otherwise, it would not do what it does by universal consent. It is implied that it has power from its parts; to deny them leads to denial of that [power]. Again, nothing follows from this authority but that the synod has the power of defining etc.

The reply to the fourth [point] is obvious from this

To the fifth [point], the answer is that, since the whole synod has universal power – however that happens – and the authority, which, absolutely speaking, belongs to the pope alone, belongs to the synod itself for the time being and is shared with it, just as anyone else could truly say, "Decreed by the authority of the sacred council etc.," so too [could] the pope himself, since his situation is not inferior to others. Nor does he, by stating that he acts by the synod's authority, deny that he acts by his own authority. Indeed, he rather affirms this, because the synod's authority of necessity includes in itself the authority of the head. Nor, furthermore, does he, by stating that he acts by the synod's authority, state that he acts by another's authority. Although a synod is other than the pope, just as a bishop's church differs from the bishop, nevertheless, it is not necessary for the church's power to be other than the bishop's; but one and the same power can belong to both in different ways, the bishop's [power] as his own, the church's as shared

[by him]. From this it is obvious that, by stating that he acts by the sacred council's authority, he does not, nevertheless, state that he is inferior in authority.

Although these arguments suffice, nevertheless, heeding the opinion of many, you must know that the pope can be called inferior in power to the synod in two ways, in extent and entirely – in a certain respect. In extent because the synod is made up of all the powers of such a multitude; entirely – in a certain respect, however, according to that portion of [his] power which the pope shares with the council, as if for its portion. The pope present in the synod is not understood, as has been said already, to share all of his power entirely with the synod, but only as much of his power as is necessary for decreeing etc.; and from that part of the pope's power and the rest of the other powers one power is made up which is – in a sense – entirely greater than that part of papal power would be on its own. This greater power is understood to be in the whole synod as in a [single] entity.

I said, "in a certain respect," because that papal power, since it is communicated as limited, so that it can be combined with other powers to form a kind of single power, is understood to be surpassed by the whole in so far as the whole can make a universal statute, define etc., which it could not do as such by itself alone. But, since the synod's whole power cannot do more than it had from individual powers of this sort, therefore, I called it entirely greater not absolutely but in a relative sense.

Lest you should think that I am inventing this papal portion, consider the power of the pope's legates in a synod, when the pope celebrates a synod by means of a legate, and you will see clearly that, because the pope did not then raise that legate up to be pope but commits as much power as is needed for the synod to be held, the pope's presence in the synod alone does not of itself mean that more of his power is imparted to the synod than may be necessary, although greater dignity and more of the Holy Spirit's infallible assistance in the synod in regard to those things which are of the faith would follow the pope's presence in his own person.

Therefore, although we are not obliged to do so, nevertheless, we can say that the pope, although inferior in extent and – in a sense – entirely to the synod, is said to do by the authority of the sacred council what he could, nonetheless, do and undo by his plenitude

of power, and, since the aforesaid words, "do by the authority of the synod or the council," give the pope an appearance of "inferiority," therefore, they are not set out at length in the sacred canons, but, like similar words, are left to pious interpretation and – as it were – corrected, when the pope says in the council, "We decree with the holy council's approval"; for approval is common to power, wisdom, consent. Nor is either superiority or equality required in those who approve, as is obvious.

To the sixth [point], the answer is that, although the whole Church could give indulgences etc., and the treasury of merits does belong to it, so that indulgences are granted according to whosoever welfare it is, nevertheless, they do not belong to it as a mistress, since it is a servant of the Lord Jesus Christ; and whatever a servant acquires he acquires for his master. To it was said, *When you shall have done all these things that are commanded you, say: We are unprofitable servants* [Luke 17:10]. Therefore dispensing the treasure for the Church's welfare, for which it exists, belongs not so much to the Church as to the Lord's vicar.

As regards the last [point] it already is obvious that we grant freely that a synod which truly is a synod, that is, a complete one, has the power to depose, excommunicate etc. The question is concerned not with this but with the mode of having [power], as is obvious from what has been said. These suffice for similar [arguments].

I said in the same Chapter xi that it cannot be inferred from the fact that the apostles sent Peter and John to the Samaritans that they were subject to the apostles, because being subject does not follow from being sent, as is obvious in the case of the Holy Spirit.

An objection is made that the correct conclusion is that the Holy Spirit is sent by the Son; therefore, [the Spirit] proceeds from Him or is inferior to Him. And so it must be admitted that Peter [proceeds from] the Church, wherefore it is not inferior [to him].

I reply: this consequence, which is called "correct," is not truly correct, since it is valid only on account of the subject matter; for the Holy Spirit is sent by Himself, as is obvious in the *Sentences*;⁴⁷ and yet is not from Himself nor inferior to Himself. Similarly, the

⁴⁷ Peter Lombard, *Sententiae in II libros distinctae*, 2 vols. (Grottaferrata, 1971–81), vol. 1, p. 138 l. 16. 1. D. 16 in init.

Son is sent by Himself. Indeed the Son is sent by the Holy Spirit, Who is from the Son, as is obvious in the same book.⁴⁸ Because the consequence is not formally correct, therefore, it does not imply that Peter is inferior to the Church or proceeds from the Church.

I said in the same Chapter XI that it follows from c. *Placuit* [C. 36 q. 2 c. 8], together with the next three chapters, that Jerome's authority combined with sacred Scripture prevailed over a council.

An objection is made that Jerome and the statement by the council are understood of different times and that Gratian's words there must be counted among the *paleae*.⁴⁹

I reply: although it is certain that Jerome speaks absolutely and not according to this or that future council, and that a general council could prohibit what was not prohibited absolutely; nevertheless, the council's words, taken not as constituting but as declaring the law, do not prejudice Jerome's authority. This is what Gratian's words mean, and not that it could not decree. Nevertheless, however this may be, I find my position supported sufficiently there, since it follows from this passage, whether by Gratian's authority or any other, that Jerome's authority prevailed over the council; and so today the Church follows Jerome's, not the council's, authority.

That Gratian's words are counted among the *paleae* by our opponent is of no consequence, because it is necessary that they be counted among the *paleae* by others and not by them alone.

I said in the same Chapter XI, on the authority of c. *Significasti* [X 1.6.4] that the councils have authority from the pope.

An objection is made that it must be understood of the council in regard to its convocation, because they usually are assembled by the Roman pontiff's authority; but, once it has been assembled, whether by the Roman pontiff's authority or otherwise, it has authority directly from Christ.

I reply: this exposition is repugnant to the text. For in that place councils are said to derive two things from the Roman church's authority, that they were held and that they received power. The first, as is obvious, refers to the fact of their being assembled; the second, it hardly is necessary to say, to the authority of what is assembled. This is shown, without any ambiguity, to be the mean-

⁴⁸ *Ibid.*, vol. 1, p. 132. Lib. 1, D. 15.

⁴⁹ These later additions to the *Decretum* were of lesser authority.

ing of this text, because it gives a reason why the apostolic see is not subject to laws made by councils. If councils depended on the pope only for being assembled, in so far as they make laws after they have been assembled, the argument presented [in the decretal] would be worth nothing for the meaning asserted. For it is quite obvious that it does not follow from the fact that councils are assembled ordinarily only by the pope that, therefore, they do not impose a law on the pope, because the fact remains that assembled [councils] have imposed a law [on him] if – [once] assembled – they do not depend on him.

I said in the same Chapter xi that a universal council legitimately assembled can err in defining if the pope is absent or does not consent; and I suggested that it can err in the same way in those things which are of the faith.

An objection is made that the determination of those things which are of the faith pertains to the general council, and that it is promised to it that *The Spirit of truth. . . will teach you all truth* [John 16:13]. As a sign of this, the Holy Spirit is posited as presiding in the council of the apostles, in the words *It hath seemed good to the Holy Spirit and to us* [Acts 15:28]. They did not say, “It hath seemed good to Peter and to us.”

Augustine seems to indicate this quite clearly,⁵⁰ “I would not believe the gospel unless the Church’s authority admonished me.”

In the sixth synod, as is obvious from c. *Placuit* [D. 16 c. 4], we have, “It pleased the holy synod that henceforth the eighty-five chapters of the *Canons of the Apostles* are confirmed and ratified.”

The same point can be deduced from *Behold I am with you all days, even to the consummation of the world* [Matt. 28:20]; for this is addressed to the successors of the apostles. The general council represents the council of the apostles and the elders.

The same thing is obvious from the fact that anyone declares that he believes in one holy catholic Church,⁵¹ for it follows from this that the ultimate decision concerning those things which are of the faith belongs to [the Church]. When the pope declares that he believes in one holy Church, he is not saying that he believes in himself.

⁵⁰ *Contra epistolam Manichaet*, v,6. PL 42:176

⁵¹ *Nicene Creed*

Further, the universal Church cannot err in faith, and the council enjoys the same privilege as the Church it represents, as well as the same power. Indeed, since the Church when dispersed can exercise no act of jurisdiction, nor define anything as a sentence, infallibility in defining ought to belong to it when gathered in a council.

If it is said that the pope represents the Church, just as the council does, this would mean that the pope represents the Church remotely; the council, however, in the most immediate way, because it includes someone from every church, at least if duly summoned, and the Church's privilege passes to the council directly representing it, not, however, to the supreme pontiff.

I reply: these objections fail in two ways. The first defect is common to all of them; the second, however, to some of the objections. The defect of all the objections is shifting from the council to the council apart from the pope. A council, even a general one, does not define without the pope's consent. It is obvious that such a definition was not made by universal consent, since the pope holds the supreme place in God's Church, the universal office and government. What has not been defined with universal consent, even if by a council as it represents the universal Church, has not been defined [at all]. I say, therefore, that the proposition stating that a general council cannot err in a judgment concerning the faith is true simply and absolutely of a council judging about the faith together with the pope; and it is not true of a headless council. This response suffices for all the objections as regards the intended conclusion; but, as far as the force of the objections themselves, the specific answers are as follows:

To the first, that the final decision about the faith belongs to the general council, the answer is that it is confirmed in regard to the council by reason of its head, just as of a man, that he sees by reason of the eye. That this is true is obvious from the Council of Rimini⁴² and Second Ephesus,⁴³ the first of which erred in faith with Arius; the second, however, erred in faith with Eutyches. It must be noted, moreover, that even the second of these was assembled by apostolic authority; and in neither did the Roman pontiff consent to the erroneous definition. Concerning Second Ephesus, the position is

⁴² This council, held in 359, yielded to pro-Arian pressure from Constantius II

⁴³ This council, held in 449, excluded foes of Eutyches

quite obvious from many letters of Leo I and the records of the Council of Chalcedon. Concerning that of Rimini, it is obvious from Rufinus⁴⁴ and the *Historia tripartita*.⁴⁵ It is manifest from the result, therefore, that the Lord's words, *The Spirit of truth... will teach you all truth* [John 16:13], were not addressed to a council disagreeing with the pope, although legitimately assembled. Let everyone who judges rightly in this matter consider these [arguments] so that care may be taken and judgment not desert intelligent people.

To the second, the answer is that, even if that council of the apostles etc. was a general council, nothing else follows except that the Holy Spirit presides in a full council with Peter present and taking the lead, which is granted freely. But we stated in that book why a definition was reached there in common, and that it was not a general council.

To the third, it is obvious that Augustine said, "Unless the Church's authority admonished me"; and he did not say, "[The authority] of a headless Church."

To the fourth, I must admit that I do not see what it proves, unless against those invoking it, because the *Canons of the Apostles*, although confirmed by a synod, vanished. So much for the exaltation of the power of the synod, which is their intention.

To the fifth, the answer is that the text refers to the universal Church, which never fails, for this is what succeeds the apostles and the others to whom the Lord spoke. However, an argument from the Church, or even the council representing [it], to a headless council is worthless.

To the sixth, the answer is that the antecedent assumed from the article of faith concerning one holy Church can be read in two ways, with the preposition "in," saying, "I believe in one holy Church," and without that preposition, which Saint Thomas⁴⁶ suggests is better, saying, "I believe one holy catholic Church." If the words are, "I believe in one" etc., the Church is taken for the whole Church, body and head, [the head being] Christ the Lord, by reason of Whom we say that we believe in the Church; and then the consequent is entirely valid; therefore, the final decision concerning the

⁴⁴ *Historia ecclesiastica*, I, 21–22: PL 21 494–95.

⁴⁵ Cassiodorus, *Historia tripartita*, V, 39: PL 69 1018.

⁴⁶ *Expositio super symbolum apostolorum*, in *Opuscula omnia*, ed. P. Mandonnet, 5 vols. (Paris, 1927), vol. 4, p. 378.

faith pertains to the Church in this sense, and the pope is not said to believe in himself. It also can be taken for the Church on earth, as united with the Holy Spirit, by reason of which we are said to believe in the Church, as Saint Thomas prefers. So again it is obvious that the consequent is entirely valid, that the final decision about the faith belongs to the catholic Church joined to the Holy Spirit as such, and the pope is not said, therefore, to believe in himself, but in the Holy Spirit, as [the Spirit] is the Church's ruler; but the further consequent: that, therefore, [the same is true] of the headless Church, is worthless.

If [the phrase] is read, however, without the preposition, then, as above, the statement is that one believes one holy catholic Church; but that, therefore, [one believes] the headless Church is worthless. It is granted that the final decision about the faith belongs to one holy catholic Church just as the power of jurisdiction, which belongs to it by reason of a part, [does]. Nor is the pope, by his believing the Church, said to believe himself; he is said, rather, to believe his office and that of others. As a sign of this: he would deviate from the faith if he did not believe his office.

To the seventh, the answer is, first, that I do not admit that the whole council enjoys of necessity the Church's peculiar privilege, which is that formed faith⁵⁷ always is in it; nowhere, however, I declare, have I found this confirmed by authentic authority in regard to the council, although it may be reasonable for it to be so *de facto* that fully formed faith might subsist in some person of the council. The second answer is that being incapable of judicial error concerning the faith is the Church's privilege by reason of its head, to which judgment belongs. Therefore, it is not the privilege of the headless Church nor of the Church as the collective body of the faithful, to which the power of jurisdiction does not belong; yet it is the Church as the collective body of all the faithful that the council represents and to which the Lord promised that He would be with it.

From this it is obvious how defective that argument is, for it proceeds as if that privilege of being unable to err judicially pertains to the Church by reason of the community, when it is well known that, just as jurisdiction pertains to the Church by reason of the head, so [does] an act of jurisdiction. Because that act, defining

⁵⁷ Faith "formed" by charity.

judicially concerning the faith, concerns the universal Church, therefore, it pertains to the Church by reason of the head, to which care of the universal Church is committed, just as other acts do proportionally, by reason of other heads.

Therefore, it is said formally, third, that the whole council enjoys the same privilege of the office, not of the person, which the Church enjoys, and in the same way, or by reason of a part, namely, the head; and similarly it enjoys the same power and in the same way. But from this follows [an argument] more to the purpose; and I grant freely that infallibility in defining concerning the faith pertains to the whole council by reason of the head, and not from the Church, to which this pertains only by reason of the head, but from the Lord Jesus, on Whose behalf the head acts.

What has been said concerning direct and remote representation implies two things, the representation of the Church by pope and council and the way of representing [it]. As regards representation, the point is that there is a great difference between the pope and the council, in that the council represents the whole universal Church, the body with the head proportionally, so that the council's head represents Christ, the Church's head; and the council's body, the Church's body. This is the true and undoubted sense in which the council is said to represent the universal Church and to have power directly from the Lord. The whole council is said to represent the Church established on earth in respect of power, in so far as all the Church's power is found in it as such or in those who act for it; in respect of votes, however, because the votes of all persons in the Church are understood to consent in it, as is obvious from Gregory's authority cited above [D. 15 c. 2]. The pope, however, is representative of the whole universal Church, of the Church's power on earth and of [its] votes in two ways, for he represents the head, the Lord Jesus Christ, by participation, the papacy in himself formally, the power and the votes of the rest of the Church by virtue of preeminence.

However, concerning the difference touched upon in the objection [p. 262], the position is entirely the opposite, for, since the council is said to represent the Church by reason of prelacy, and the pope alone was made prelate directly by Christ, while the rest of the body of the Church had this gift from the Lord with Peter as mediator, it must be said that the pope represents the Church

more directly than the council, because the pope represents the Church with Christ alone as mediator, the council, however, with Christ and the pope as mediators.

[Concerning Chapter xiii]

I said in Chapter xiii that the power to appoint a particular person to the papacy is regularly and principally in the pope, and in the council or the Church only in certain cases; and, again in Chapter vi in other words, that the power to elect the pope is in the power of the papacy. I advanced for this in both places two arguments: the first based on the case of Peter in c. *Si Petrus* [C. 8 q. 1 c. 1], the second, from the fact that the pope decides in regard to the process of election, so that what is done to the contrary is null.

Four objections are made against the claim that such power belongs to the pope, and against the claim that it is in the Church or the council only in certain cases, and against both [my] arguments.

First, then, it is argued against the first [point] from Ockham:³⁶ if the power to elect the pope were in the pope's power, it would follow that the pope could leave the Church without the power to elect, which is impossible; therefore. . . The conclusion holds, supposing that, with the electors dead or deprived, the pope refused to appoint [new] electors. If it were said that, in such a case, it devolves to the Church, not so; because then it would follow that the Church was superior to the pope, which you deny. The conclusion holds, because no power ever devolves to another on account of someone's negligence unless he is simply and absolutely superior: papal power does not devolve to a bishop from the pope's negligence in not providing [someone] to some benefice; but vice versa. Again, if the Church has the power to elect in that case, the question is from whom it has it directly, since it does not have it from itself. If we say, "from Christ," it would be difficult to find in holy Writ the foundation on which it could be established that it has it in that case and not regularly.

³⁶ *Dialogus*, Pt 3 tr 21 3 c 5 *Opera plurima*, 4 vols. (Lyon, 1494-6; Farnborough, 1962), fol. cclxii^{ro}.

Second, it is argued principally from [the Archbishop of] Armagh⁵⁹ that it is not credible that the Lord committed the power to elect the supreme pontiff to one man's will, because it could happen that one of his lineage might say, *Let us possess the sanctuary of God for an inheritance* [Ps. 82:13 (83:12)], since anyone might appoint his kinsman in his place at the end of [his] life.

Third, because it would follow that the power to bring down a pope in a case of heresy, for which he can be deposed, would belong to the pope, and so equal would have power over equal. Again, the pope could decree that a heretic pope could be deposed by two or three persons. This conclusion holds: because these powers have to be made and destroyed by the same causes.

Fourth, if the power to elect the pope belonged to the pope, therefore, either that power belongs to him so that he can elect a successor by himself or only so that he can communicate that power to certain men. The latter has no appearance of truth. From the former, if it were conceded, this inconvenience would follow, that it would be in the power of two to arrange that at alternating times each in his turn would be supreme pontiff for a year, after the fashion of Annas and Caiaphas. The conclusion is obvious, because one pope by his will could elect another pope, and, at the year's end, the other would reelect him; and so one after the other.

Fifth, Christ did not confer on the pope any power harmful to the Church; but, as the gloss on c. *Si Petrus* [C. 8 q. 1 c. 1] holds, it is harmful that anyone should elect his successor; therefore, Christ did not confer that power.

Against the argument cited from Peter's case the first objection is that Peter did not appoint Clement but arranged for his appointment. Second, he did this through the prompting of the Holy Spirit, by which he also foresaw [his own] death. Third, a pope, in a case of necessity in which the electors could not be assembled and a shepherd is needed to deal with imminent danger, can appoint a successor.

Against the argument from the fact that the pope regulated the process of election, even determining the electors etc., the answer is that the pope did not give the power to elect to the cardinals, but

⁵⁹ Richard Fitz Ralph, *Summa in questionibus Armenorum*, l. 7, c. 19

to the universal Church, in the sixth synod in c. *In nomine* [D. 23 c. 1], where Pope Nicholas [II] decreed not by his own authority but by that of the holy fathers. Therefore, where the cardinals manifestly abused the power given them, the whole body⁶⁰ of the faithful could deprive them of the power to elect the pope and commit it to others.

I reply; and first I expound the meaning of my words in that book, second, my opinion on this subject, third, I will undertake to answer the objections.

As for the first, I never said that the pope can elect his successor, nor that the power to elect the pope is his formally, nor that the power to appoint someone to the papacy is the pope's formally. What I said was that power of this sort is in the pope ordinarily and principally.

For it is common knowledge among learned men that many things are in a superior's power which are not in him and in his power formally and which he cannot even do by himself directly. Thus there are in the intelligences, which we call angels, the forms of inferior beings and of their powers, yet not formally nor in such a way that they can exercise these acts by themselves. There are in the power of heavenly bodies the forms of the elements and of their powers, yet not formally nor in such a way that they can perform their works by themselves. It is not contradictory, therefore, that power of this sort, [the power] to elect, should be in the pope regularly and principally, and should not be in him formally, nor can he exercise the act of this sort of power by himself.

My words, therefore, are to be taken in this sense, that the power to elect is in the pope's power virtually or preeminently, and this, in respect of its mode of being; and that [it is] in the pope's power regularly, that is, in the ordinary course of law. The situation of the widowed Church⁶¹ is different, in which there is power of this kind in certain circumstances; and, in particular, it is different for the Church in that situation, in as much as [the Church] can in such a case not only elect on occasion but can appoint electors and regulate the mode of election. So much for the first [point].

As to the second [point]: because whoever has the potency also has the act, as is said in [Aristotle's] *On Sleep and Wakefulness* [c.

⁶⁰ Or "corporation," *universitas*

⁶¹ That is, when a pope dies and no legitimate electors survive him

1], and the act of electing the pope simply and absolutely does not belong to the pope; therefore, the power to elect the pope does not pertain formally to the pope. The minor is proved: electing a pope is an act of making a pope at that time in respect to [the act] itself; therefore, it is contradictory to presuppose the existence of the pope at the time [of the election]. The consequent holds: because what is being made does not [yet] exist, for, if it were, it would not need to be made. Further, it follows that the pope's elector is not the pope; and the conclusion holds, because an elector is presupposed by the nature of election, and exists simultaneously with the election. Again, it follows that the act of electing the pope does not pertain to the pope, and the consequence holds, because electing a pope is the act of a papal elector. From this, therefore, it is obvious that the power to elect the pope, the exercise of which is, by its nature, simply and absolutely, the election which makes him pope at that time, is not in the pope's power formally.

This is confirmed by the authority of ecclesiastical custom, by which it is established that elections of pastors do not take place except when there is a vacancy; and also by that of divine Scripture, *ordering all things sweetly* [Wisd. 8:1], which has said, *The morrow will be solicitous for itself. Sufficient unto the day is the evil thereof* [Matt. 6:34]. It is formally located, therefore, as is appropriate to the time when the power to elect must elect; and this is not in the pope, who could elect only in order to avoid solicitude for the morrow.

The location of this sort of power to elect formally must be investigated, according to both [Aristotelian] Peripatetic and apostolic authority, by which invisible things are to be known by us from visible ones,⁶² from the exercise of the act of election itself. It appears without any ambiguity that the election of a pope belongs to the Roman church, reckoning as part of the Roman church the cardinal bishops, who seem to have been brought in as suffragans of the archbishop of Rome. Therefore, apart from any human ordinance and given the existence of known members of the Roman church, the power to elect the pope regularly belongs to that church as much as the power to elect their bishops belongs to other churches.

⁶² Cf. Aristotle, *Metaphysics*, I,1, Rom. 1:20

From the fact that the Lord Christ chose the Roman church as Peter's church, when He prevented his transferring the papacy from Rome, as [he had] from Antioch, saying, "I am coming to Rome to be crucified again,"⁶¹ He is said to have granted to the Roman church the power to elect the pope not positively but negatively, by not ordaining the opposite. In case of uncertainty as to the electors, He is understood to have given the power to the universal Church for the same reason – because he is the bishop of the universal Church, and in the same way – negatively.

By a human ordinance, the location of the power to elect is restricted by way of a positive determination by apostolic authority to the cardinals of the Roman church alone. The pope, from eminence of power, care and universal rule, can regulate the power to elect, and so direct and ordain it that to proceed otherwise is void in its effect and its agent, as is obvious in the acts of the pontiffs themselves and the Church's observing [these regulations]. So much for the second [point].

As to the third [point], in reply to the objections, in so far as they militate against this, the answer to the first is that it is impossible for the Church to be left without a pope and without the power to elect the pope, since, when the pope dies without any decree concerning this, he tacitly leaves the power to elect to the Roman church, just as Linus is believed to have been elected Peter's immediate successor.⁶²

Also the response given, that by way of devolution the power to appoint someone to the papacy would be in the universal Church in such a case, in so far as is assumed in my book, is not understood of devolution on account of negligence, against which the objection lies, but in a general sense; and, therefore, the term "devolution" is not so restricted, since it includes in this statement the mode of devolution, of succession, of retracting or of anything else. Accordingly I based my argument not on the electors' negligence but on a defect in the ordinary electors, and I understand what was said there in such a case, not in another. Indeed, where there are known electors, who are the cardinals today, the Roman church does not step in – nor does the universal Church;⁶³ if all the cardinals were dead, however, the Roman church, by which Linus was elected prior to

⁶¹ The *Quo vadis* story is found in *Martyrium Petri*.

⁶² Ordinary gloss to C. 8 q. 1 c. 1.

⁶³ Pollet omits *neque ecclesia* found in the 1514 edition

the human laws we know, steps in immediately. Yet, because a part is included in the whole, and the Roman church is included in the universal Church, if a general council should, with the consent of the Roman church, elect the pope in such a case, the true pope would be the one elected in that way.

From whom the Roman church or the universal Church would have the power to elect the pope in a certain case, and not regularly, is quite obvious. For it is obvious that it would have [that power] negatively from Christ and His vicar, because neither ordained the opposite, and the Lord Christ established Peter perpetually in [his] successors. It is indeed supported by a second argument: carnal succession would be at variance with the counsel of chastity in the New Testament, especially appropriate to the most perfect state, which is the pope's, so too voluntary acts, like adoption or appointment of a successor, would be against the wise disposition of the Church. So the perpetuation of the succession to Peter is left by way of election – [election,] undoubtedly, by his church, which is both Roman and universal. Unless the pope himself – who represents the Roman and universal Church in electing – decides [otherwise], we must abide by the decision of Peter himself and of the Lord, by which (through the fact, that is, of Peter's having died as bishop of Rome) it was determined that the Roman church should represent the universal Church in the power to elect. This is obvious if we clear our minds of every positive law and consider [only] the custom of the ancient Church. Therefore, there is no need to worry about who conferred upon the Church the power to elect in certain cases and not in the ordinary way.

To the second [point], the answer is that [what Fitz Ralph says] is not contrary to the sense expounded here. Nevertheless, the argument is not ostensive; nor does it lead to what is inappropriate from the nature of power, but from [its] abuse; and, if it were permissible to argue from that, I do not know what universal power could be rightly committed to one man.

To the third [point], the answer is that, because any power whatever of the Church is inferior to the pope's, to which all other powers are subject, I see no problem in granting that even the power to depose a heretic pope preeminently is contained in the pope's power, and that he could ordain that he could be deposed by the College of Cardinals in a case in which he should be deposed. Nor

does it follow that equal would have power over equal, because he would not be exercising authority over the pope but over the conjunction of the papacy with a particular person in circumstances in which that conjunction may be nullified by divine law.

To the fourth [point], the answer is that, properly speaking, the pope does not have the power to elect; hut, rather, he can determine the electors and the mode of election. So there is no need to reply to an improper conclusion – which, however, would follow from the abuse of power.

To the fifth [point], the answer is that not power but abuse of power – if it were given by Christ – would be pernicious.

To the objections to the argument based on Peter's case,⁶⁶ the answer is that the first gloss seems to be contrary to the text, which says, "Peter turning [power] over to him," and not, "[Peter] ordaining that it be turned over to him." However, the second gloss can be accepted, although it is not authentic, especially because he knew of his death not by the prompting of the Holy Spirit but by the Lord's voice saying, "I am coming to Rome to be crucified again." The third gloss, if it is accepted, favors the eminence of the pope's power, as is obvious; but how there will then be such a necessity should be shown explicitly.

Nevertheless, it seems to me that, according to the second gloss, Peter did this by the prompting of the Holy Spirit, or from an eminence of power, for which reason Peter's act is said to have been annulled by the Holy Spirit – Peter and Clement will not always be with us; or rather that, as an uncertain fact, it does not amount to a firm authority. I say, "uncertain," because the Church, reckoning Linus and Cletus as supreme pontiffs, counting the years in which each of them ruled the Roman church before Clement, seems to witness that those words of Pope John III must be accepted as a narrative of a fact that is believed, and not as authorizing the fact which is narrated, on account of which we use that authority for what it is worth in so far as it can have worth. The verse in the same gloss adds to this, saying of Clement, "The world disputes this, whether he was fourth or second."

Finally, to the objections against the argument from the fact that the pope made regulations concerning the pope's electors, the

⁶⁶ Cajetan is referring to his discussion of Peter's appointment of Clement as pope (p. 62) and Alman's reply (p. 177).

answer is that it is quite obvious from c. *In nomine Domini* [D. 23 c. 1] that the pope made that ordinance by his own authority in the synod, as is obvious from these words, "The venerable pontiff, decreeing by apostolic authority, says. . ." It is remarkable that our opponents have not taken into account the grammatical construction in the words which follow, namely, "For which reason, instructed by the authority of our predecessors and the other holy fathers, we decree that, passing over" etc. They have said, on the basis of these words, that the pope decreed not by his own authority but by that of the holy fathers, although "by the authority" refers to "instructed," not to "have decreed." So it is firmly established that the pope made that statute by his own authority.

Again, as much as all the statutes concerning the election of the pope which⁶⁷ the supreme pontiff made – even in a synod – he made by his own authority, and as much as the holy fathers assembled in a synod can decree nothing without the authority of the Roman pontiff, these also are confirmed to have been made by the pope's authority. Thus the statute of Gregory X with the Council of Lyons, which is found in c. *Ubi periculum* [vi 1.6.3], regulating the pope's electors, revoked by⁶⁸ Hadrian V and John XXI, and then restated by Celestine V and Boniface VIII, has authoritative force, as the gloss on the same chapter says. The Clementine *Ne Romani* [Clem. 1.3.2], concerning the pope's election, it is obvious, was made by the pope, not by the general council. Also it is obvious that many things concerning the pope's election established in D. 79 are mentioned by Gratian. Most recently Julius II,⁶⁹ who lives and reigns, issued a new statute concerning the pope's election without a general council. Therefore to deny that power of this sort is in the pope is against reason.

[Concerning Chapters xx, xxi and xxii]

I said in Chapters xx, xxi and xxii that the authoritative power over the conjunction of Peter and the papacy, but not over the pope, is in God's Church.

⁶⁷ Pollet has *quod* instead of the original edition's *quae*, masking the reference to c. *In nomine* [D. 23 c. 1], which was enacted in a Roman synod, and to the two decrees mentioned below, which were enacted in the Second Council of Lyons and the Council of Vienne respectively.

⁶⁸ Pollet has changed *revocatum per* in the 1514 edition to *renotatum pro*

⁶⁹ COD 600-2.

Three objections are made against this: first, because these points are contrary to what is said [elsewhere] in that book; second, because these two points are contrary to one another; third, because it is false that the power to depose the pope, which is in the Church, is not authoritative [power] over the pope.

The first is proved thus: I said in Chapters vi and xiii that the power to confer ecclesiastical power upon this or that person belongs to the pope alone; now it is being said that authoritative power over the conjunction is in the Church, therefore, [there is] a contradiction.

The second is proved by twisting the example I use back against me. Having power over a man is not having power over the soul, or over the body, but over the separation of the soul from the body, since killing a man does just that. What else, therefore, is having authoritative power over the pope than being able to separate the papacy from him authoritatively?

The third – that the Church, authoritatively superior to the pope, deposes him – is proved in three ways. First, because otherwise a heretic pope who was summoned would not be bound to comply, nor would he be contumacious if he did not comply; therefore, they will judge him unheard or not obliged to respond. Second: every act punishing a person on account of his own sin is the act of someone having jurisdiction over the one who is punished. Third, this is advanced against me *ad hominem*:⁷⁰ the Church can excommunicate a heretic pope before deposing [him]; therefore, it has the authority of jurisdiction over the pope. The conclusion is obvious; and the antecedent comes from you, because you say that the following argument is valid: he is not excommunicated *ipso facto*, therefore, he is not deposed. And again: [the Church] cannot excommunicate; therefore it cannot depose. And yet again [the Church] can depose; therefore, it can excommunicate.

I reply as follows. To the first [point], the answer is that there is nothing contradictory in what I say, since the earlier discussion was about the authority of preeminence, where the Church's power was compared to the pope's. Therefore it was stated there that the pope is moderator and guide of the Church's power, and not vice versa. This belongs to preeminence, and not to preeminence in power.

⁷⁰ Cajetan is summarizing Chapter xi of Almain's tract, see p. 189 above.

This discussion is about authority in efficacy. When we say that the Church's power can be used authoritatively over the conjunction etc., this means nothing other than that such a power can effect that conjunction as its superior, for an agent is superior in regard to a given effect to the extent that the effect is produced [by it]. For it is obvious that, despite this, it remains true that the power of conferring ecclesiastical power by virtue of preeminence is in the pope alone.

To the second [point], the answer is that these two, power over the conjunction and lack of power over the pope, are not repugnant to one another in any way, because they are different. The pope represents something greater than the conjunction, since "pope" represents the form of the papacy, just as "lord" [represents] the form of lordship. For this reason, twisting the example concerning "man" is worth nothing. For it is not appropriate to equate what "pope" represents with what "man" represents; and to judge similarly in both cases: "man" represents formally an entity composed of soul and body, whereas "pope" represents formally the papacy as such, although in the concrete person, as is obvious. But Pope Peter has in himself all that is meant by "man", and it is conceded that this power can be exercised over Pope Peter in respect of the matter, as is said in [Chapter xx of] my book, not, however, over the pope, because it cannot be exercised in respect of the form. Therefore, it is obvious that there is no repugnancy, and that it is one thing to do something to the pope and another to do it to Pope Peter, just as it is one thing to be able to do something to a composite entity and another to do it to a form.

To the first [objection] against this third [conclusion] – that the Church's power is not over the pope – the answer is that the heretic Pope Peter is bound to everything that is necessary for a sentence of deposition against him, as is stated expressly in my book in Chapter xxi, so that the objections seem rather surprising. I say, therefore, that the heretic Pope Peter, regarded as an individual in that situation, is subject to the Church's power to depose and necessarily to all the [procedural] preambles and consequences. Nor does it follow from this that the Church's power is over the pope, but over Pope Peter in that situation in this respect alone. The answer to the first and second [objections] is obvious from this.

To the third [point], the answer is – as is obvious from

Chapter xix of my book, on the basis of which I am supposed to have said that the argument in question is valid – that I never said this, never dreamed of a connection between excommunication and deposition; indeed, I expressly thought the opposite. From that common root – that what is inflicted by human judgment is not incurred *ipso facto* merely on account of a purely internal sin – I inferred two things, denial of excommunication and denial of deprivation; and I said that, if it follows on this basis that he is not excommunicated, much more does it follow that he is not deposed, because a [formal] sentence is not required in the former case as, according to the jurists, it is in the latter. The argument is directed against someone who asserts a formal inference from denial of excommunication to denial of deposition; and, therefore, it is not to the point.

I said in Chapter xxi that the pope could commit the power to depose a heretic pope to the College of Cardinals.

There is an objection that I cannot by saying this sustain [the point] that equal has no power over equal.

I reply: it is perfectly obvious that it does not follow from this that equal has power over equal, because the power to depose is not over the pope but over the conjunction of Peter with the papacy, and this conjunction is not equal to the pope. Therefore power of this sort, [power] to depose the pope, although less than the papacy, cannot be taken away from the Church by the pope, for the obvious reason that it belongs to it by divine law against a heretic pope, as is obvious from the things said in my book.

[Concerning Chapter xxvi]

I stated in Chapter xxvi the reason why the pope can be deposed for infidelity alone, because only infidelity among crimes is contrary to his being pope.

Two objections are made to this argument. First, that it is false that faith is required for being pope, since the pope, if he becomes a heretic, still is pope according to what I say; for his baptismal character suffices. Second, that this reason would prove just as strongly that he could not be deposed for heresy, because heresy is not opposed to being pope.

I reply: my argument has not been properly understood. For I carefully placed not faith but being a [baptized] Christian among the required conditions for being pope, so that I might exclude this objection. Nor did I assume that infidelity alone among the vices is contrary to faith, but [that it is contrary] to Christianity,⁷¹ or the condition for being pope, as is obvious in my book. It follows that infidelity alone among the vices is opposed to the state of being a Christian which constitutes a member of Christ, and that Christianity is required of necessity for being pope. In the same book, in Chapter xxvii, I showed clearly the difference between Christianity and faith, and that Christianity is a certain ecclesiastical status constituted by the [baptismal] character and by faith.

But so that the force of the argument may be perceived more clearly from the intended conclusion and direct opposition to infidelity, it is to be considered that the conclusion intended by, or deduced from, that argument is not that the pope ceases to be [pope] on account of infidelity, but that he is in a position very close to not being pope; and this is the meaning of the conclusion that he should be deposed. Therefore, it is not necessary that infidelity be so opposed to Christianity that it completely abolishes being a Christian. If it did so, it would imply not that the pope must be deposed but that he has been deposed [already]. But it is enough that it is opposed to Christianity so that it makes a Christian man, humanly speaking, no longer part of Christianity. Indeed, as a result of thus no longer being a part of Christianity, Pope Peter makes himself liable to deposition, because, by not being such, he is so capable of being deposed, as is obvious from what was said in my book.

This also is manifest from the pope's office, for, since the pope's office is feeding by what he teaches and does, when he has fully formed faith, it is as if a healthy man lived in the papacy; when, however, he has unformed faith on account of loss of charity, he no longer feeds by example but only by teaching; and thus it is as though a sick man were in the papacy. Finally, if he lost faith entirely, so that he no longer is able to feed even by doctrine and is almost a dead man, like a man at the end of life, incapable of any

⁷¹ That is, the state of being a baptized Christian.

activity, he is in such a position that he is removed from papal life by the death of deposition.

Therefore, the reply to the first [objection] is obvious: because it does not tell against the argument that infidelity is compatible with being pope, as is obvious from what has been said. You can put the point in one word, that faith is absolutely necessary for being pope, although it is not necessary for being pope in this way, as if dead. Indeed, from the fact that it makes a pope pope absolutely, while its opposite makes him pope as if dead, it plainly follows that it makes the pope liable to deposition.

The answer to the second [objection] is obvious from this: heresy is not compatible with being a Christian absolutely, nor with being pope absolutely, although it does not entirely rule out being either; but, because it makes someone not be a Christian, humanly speaking, therefore, it makes him capable of not being pope, since being pope absolutely presupposes being a Christian absolutely. But the argument goes wrong through having interpreted this reasoning as if it implied [his] not being pope as a result of his having been deposed, whereas the opposite is obvious in the text [D. 40 c. 6]. Therefore, that argument, not yet having been found wanting [cf. Dan. 5:27], remains, although weighed in the balance, as I said I wished [it to be].

I said in the same Chapter xxvi, together with xxv, that only a case of heresy is excepted by sacred Scripture from the pope's immunity to punishment with respect to the Church.

There is an objection that we find in sacred Scripture that a man guilty of other crimes must also be shunned, as is obvious from, *If any man that is named a brother, be a fornicator, or covetous, or a server of idols, or a railer, or a drunkard, or an extortioner: with such a one, not so much as to eat* [1 Cor. 5:11]. The Lord indicated in Matthew 18[17] that a man must be excommunicated for any mortal sin to which contumacy is added. If these texts have been glossed concerning subjects [who have a superior] on earth, the texts cited by you concerning a heretic will be glossed in the same way.⁷²

As for the sayings of the Savior and Peter [Matt. 23:2 and

⁷² Cajetan is referring to Chapter xii of Almain's tract (p. 192).

1 Pet. 2:18], it is granted that, as long as they teach well and remain prelates, they are to be heard.

I reply: since all sacred Scripture has one author, the Holy Spirit, and is, as it were, one entire doctrine of divine law, it must be attributed not to the glosses but to the text when the sense of one [passage] is gathered from a conjunction of diverse passages in Scripture; this is the case here. Since many vicious men are to be separated from the Church by divine law on account of heresy especially and also other crimes, and an exception is made by divine law concerning prelates alone in crimes other than infidelity, it is plainly implied, independently of our glosses, that divine law prescribes separation for other men, on account of many crimes, but for a prelate only on account of infidelity. Scripture, therefore, speaking of a heretic, refers to prelates and subjects alike, because no exception is made for a prelate in that case; speaking, however, of other crimes, it absolutely does not include a prelate, because it excepts him.

To the response made to the exception made by the Lord and by Peter, when a prelate is excepted, *On the chair of Moses* [Matt. 23:2] and *Be subject to wicked masters* [1 Pet. 2:18], my reply is that "as long as they teach well and remain prelates" can be understood properly or improperly. It is understood properly if the meaning is, "as long as *per se* they teach well and are prelates." In this sense it does not stand in our way, for the faith of Christ is the basis of doctrine and sustains a prelate simply in being such; and, therefore, so long as they have faith, they have the source from which, *per se*, they may teach rightly, and [on the basis of which] they are prelates so far as depends on divine law. This is obvious in my book. However, [this response is understood] improperly unless the meaning is that it is not said that a prelate should be tolerated, but that, if he is tolerated, he is to be heard [and obeyed]. For, since what is less is included in what is greater, and since it is greater to hear bad prelates to some purpose and to obey them than [simply] to tolerate [them] (which is obvious), the upshot is that the command of the Lord and of Peter concerning obedience to a prelate of evil life and sound doctrine includes within it a command concerning tolerance by those on whom obedience is imposed.⁷³ And so the authority of

⁷³ Pollet notes that Cajetan is arguing that this command imposes not just tolerance but obedience.

divine law that was cited remains efficacious for our purpose, founded on the firm rock.

I said at the end of the same Chapter xxvi that the pope is subject to the Church only in a case of heresy so that he can be deposed.

There is an objection, first, that it is ordained in Clement's letter to James,⁷⁴ from the words of the apostle Peter, that Pope Clement would be deposed on account of negligence. Indeed, the Church does not reject that letter, which suffices. Second, that, since the Church is the pope's judge in a case of heresy and would not have such power except from Matthew 18[18], and there is no indication there that the sin of heresy is worse than any other combined with contumacy, it follows that the Church is not the pope's judge only in a case of heresy. Third, that, if the vicar of an absent king ruled tyrannically, the community could depose him; therefore, the Church can depose the vicar of Christ the Lord if he rules tyrannically.

I reply: the letter referred to is rejected as readily as it is accepted. Indeed, it is rejected more readily, as is obvious from the contrary decree *Si papa* [D. 40 c. 6], where manifestly the pope is said not to be judged on account of negligence, although [it is] pernicious. Therefore the authority of this [text] does not suffice.

The words of the Lord cited in the second place [Matt. 18:17] show the Church's power over those subject to it as such. Therefore, since the pope, according to other passages in sacred Scripture, is not subject to the Church except in a case of heresy, it follows from the Lord's words that, because he is the pope, the Church does not have power over him except in a case of heresy. What is not expressly stated there is made sufficiently obvious elsewhere.

To the third [point], the answer is that this simile fails in two ways. First, because a free community has the power to depose the prince, that is, the king, if he rules tyrannically; and, therefore, it is not surprising if it also can depose his vicar. The Church, however, is the servant of its prince, Jesus Christ. Second, because an absent king is supposed to be only a man and to govern only through his vicar. Our king, however, is absent in the body in such a way that He hears in His own person complaints against His vicar

⁷⁴ *Epistola I, ad Iacobum fratrem Domini, in Decretales pseudo-Isidorianae et Capitula Angilramni*, ed. P. Hinschius (Leipzig, 1863), p. 32

from the Church and from its individual members, and, therefore, His vicar is not to be deposed by the Church. One must have recourse instead to the best of princes holding audience, so that He may depose.

I said in the same Chapter xxvi that the head must not be cut off on account of scandal, according to the Lord's words in Matthew 18[:18].

There is an objection that, although the head must not be taken away totally, so that there never again would be a head, nevertheless, that head must be taken away without which life remains in the body – which indeed infects the body in so far as lies in its power.

I reply: it is understood from the Lord's words, and yet negatively, as was said in my book, that this head must not be cut off either totally or at all, since the words are, expressly, *If thy hand, or thy eye, or thy foot* [cf. Matthew 5:29–30]. Indeed, the use of the added pronoun [*thy*] shows that the reference here is to a member; and, consequently, we take it as denying that the head should be cut off. Also, it is false that there is life without that head, since it saves the Church in the Lord's place, as is stated in c. *Si papa* [D. 40 c. 6]. Nor does this head infect [the Church]; on the contrary, it teaches rightly. [And] although abuse of the power of headship by him, [the pope,] as far as lies in his power, may infect the Church, it is not the head but the abuse of its [power] that is at fault. So the head should not be cut off, rather its abuse should be prevented by appropriate remedies.

[Concerning Chapter xxvii]

I said in Chapter xxvii that God made the best provision for the Church, ordaining that it should use the remedy of prayer against an evil pope, but not the power of deposition.

Three objections are made. First, that the ecclesiastical polity would have been less well organized than a civil one. The conclusion holds, because a civil polity can depose a prince who rules tyrannically; the ecclesiastical polity, however, could not. Second, that God would have denied the community of the Church a power naturally belonging to it and necessary for peaceful intercourse, for such is the power to depose the prince in a case of tyranny. The

conclusion holds, because such a power naturally belongs to a perfect and free community. Third, that, since God could have instituted a more opportune remedy for the Church than prayer – the power to depose – to say that He left [it] no other power than prayer is to say that the ecclesiastical polity was not well organized; and that it was made a servant in strictest servitude.

I reply: God instituted the ecclesiastical commonwealth much better and more excellently than the civil one, since He instituted it with an immediate and homogeneous head, living forever, without the ability to err, spiritually present to the prayers of all and of every individual everywhere. This absolutely is the constitution of the Christian commonwealth.

In regard to [its] constitution, for the time being, during the bodily absence of our prince, it is again to be called the best, since it is in accordance with its original constitution. Since the Christian commonwealth, according to its original constitution, was born a servant, and all power is in its natural prince, its constitution is, therefore, entirely fitting for the time being, in that full power is committed not to the community but to the prince's vicar, as has been said before; and that commonwealth, as long as the prince's vicar absolutely is subordinate to the prince, which is effected by being a Christian, absolutely recognizes the living prince [Christ] and has recourse to Him holding audience and prepared to hear.

You must know that men sometimes are mistaken in this matter, [moving] from denial of the mode to denial of the thing [itself]. For, although the deposition of a pope can happen in many ways – by human provision, for instance, and by the persevering prayer of the Church, and there is no need for either mode except in a case of true necessity – it does not follow from the fact that the Church has not been granted the power to depose by human provision that it has not been granted [any] power to depose a pope; for it does so unfaithfully by another means, namely, by persevering in prayer. What we can do by means of friends, the Philosopher bears witness,⁷⁵ we can do in a sense by ourselves – how much more can we do through the Father [in heaven].

To the first [objection], therefore, the conclusion is denied. The proof is that each polity, whether civil or ecclesiastical, can depose

⁷⁵ Aristotle, *Nicomachean Ethics*, III,5

one who rules it tyrannically, but in different ways – the civil one, being perfect and free, by means of power and by human provision, the ecclesiastical, however, by means of the Father's own power, by perseverance in prayer when it truly is necessary. This mode, more excellent and unable to err, as the former can, is better, and, therefore, the ecclesiastical commonwealth is no less well but better provided for than the civil one in regard to the way of ridding itself of an evil minister.

In reply to the second [objection], the conclusion is denied: because the Christian community was born a servant, and, for this reason, power over the prince does not belong to it by natural law; and, consequently, neither [does power] over the prince's vicar, unless it is granted to it by the prince. Therefore, although it is true that the ecclesiastical community, as distinct from the prince, does not have authoritative power over the prince and his tyrannizing vicar, nevertheless, this was not taken away from it by Christ, or in any other way, but by its own nature. Because it was born a servant, it incurred this deprivation

To the third [objection], the answer is that there was not a more opportune remedy by human provision than the Church's persevering prayer. First, because human provision can fail, since, indeed, *the thoughts of mortal men are fearful, and our counsels uncertain* [Wisd. 9:14]; the Church's persevering prayer, however, cannot fail. Indeed, we might depose when it is unnecessary, neither foreseeing the future nor scrutinizing what is hidden. The Church's persevering prayer, however, would not depose when it is unnecessary, because the good Lord denies what we wish so that He may give what we should prefer. Second, because the Church's persevering prayer for itself in things necessary for its welfare is an easier, less readily prevented and more efficacious cause than all the provision of all men. [Human provision] has difficulty in reaching agreement. It can be impeded by power, and it does not have everything subject [to it]. Prayer as previously described, however, reaches agreement easily. It cannot be impeded by any human power, and it has all things subject [to it] under God.

It is surprising, however, to find the further remark, namely, that "God could have left. . . no remedy other than prayer" etc.,⁷⁶ we say

⁷⁶ Cajetan is citing Chapter xii of Alman's work, see above pp. 193–4

that [prayer] was left as the sole supreme and absolutely efficacious remedy, there being many other remedies existing, by way of admonition etc. I say, "surprising," because, since we naturally are protected by the same things from which we have our being and are preserved, and the Christian commonwealth is increased by prayer and constituted in one fold – the Father says to Christ, *Ask of Me, and I will give Thee the Gentiles for Thy inheritance* [Ps. 2:8] – and is conserved by prayer – Christ says to Peter, *I have prayed for thee, that thy faith fail not* [Luke 22:32] – in the natural order too it is to be defended by prayer against anyone who rules tyrannically.

I say, "surprising," unless someone thought the Church's persevering prayer for itself in its true necessity can fail, which is near to infidelity, if not actual infidelity, it seems in my humble opinion. Indeed, it seems to derogate from divine providence, which has the Church in its special care. If nature does not fail in what is necessary, how can God, Who gave Himself to the Church, fail her in necessary things, if the Church has done what it ought to do, as is obvious from the conditions of prayer described?

Finally, I say, "surprising," since, if this remedy, the Church's prayer etc., is believed to be undoubtedly efficacious, why is it said that the Church is ineffectively provided with an opportune remedy? And by this way of excluding a tyrannical pope from the Church all objections are met concerning the body with respect to the contagion of a member and the like. Indeed, the Church's persevering prayer is enough for all things.

Out of zeal for [the Church] I undertook this task of responding; believing that I have answered some, although not all, frivolous objections, and should not to be abused on this account. I, therefore, beg the readers to show themselves fair interpreters or censors. I wish nothing here or elsewhere to be attributed to me, but to reason or cited authority; and this everywhere and always under the correction of the sacrosanct Roman church.

Rome, November 26, 1512, to the praise and glory of our Lord Jesus Christ. Amen.

The end.

JOHN MAIR

[A disputation concerning the authority of
the council over the supreme pontiff]¹

[A disputation whether the pope is subject to
fraternal correction and the universal council]

Concerning these texts, *If thy brother shall offend against thee* [Matt. 18:15] and *Whatsoever thou shalt bind upon earth, it shall be bound also in heaven* [Matt. 16:19], the question is asked whether there is any one of the brethren who is not to be corrected in this way. For the affirmative it is asserted that the same argument applies to any brother; therefore, if any one is to be corrected, all should be. You can argue for the negative that we are to understand by the term "church" "the church's prelate"; but there is one prelate of the Church who does not have a superior, namely the Roman pontiff; therefore, if he should sin, we cannot denounce his sin to the Church. The question at issue here is whether the supreme pontiff is over the universal council or the universal Church, which is represented by the council.

On this question there are opposing ways of speaking, one of which holds that the pope is above the universal council. This view has been and is held by some of the cardinals and by the Thomists generally; and in Rome (it is said) no one is allowed publicly to maintain the contrary. The other has always been followed by our University of Paris since the days of the Council of Constance, so

¹ This is Richer's title for Mair's work, which Du Pin reprints. After a brief comment on excommunication, he adds the subheading given below.

that any member taking the other view, upon being challenged, is compelled to recant it. For my part, although I might avoid this question, I can hardly – since it so obviously falls under the chapter on which I am commenting² – conceal my opinion. Nonetheless, I shall make some points which I leave to be examined by the judgment of those whose province it is to do so, and I shall not treat the matter at great length, because this would depart from the track of my commentary.

I shall propose two articles. In the first, I shall posit a definition of the universal council, adding a single conclusion. A council is defined thus: it is an assembly from every appropriate rank in the [ecclesiastical] hierarchy summoned by those upon whom it is incumbent to do so to discuss with a common purpose the public welfare of Christendom. The material cause is indicated by “an assembly from every rank”; the efficient cause, by “him or those upon whom it is incumbent to do so”, the formal cause, by “common purpose”. The final cause is made known by “welfare.” Having said this, I shall posit one conclusion, and support it with a few arguments. Afterwards, I shall introduce in opposition the various arguments which weigh more strongly with others (in so far as these come to my mind), and I shall undertake to dispose of them.

The single conclusion is as follows: a council, duly assembled, representing the universal Church, is superior to the supreme pontiff; and I take “church” to mean the Church apart from him. It would matter little to the other side if I were to include him, since they say that he alone has as much power as the whole Church, himself included. The first proof of this conclusion is as follows: when there are two powers, A and B, and an appeal lies from A to B (and not conversely), and when B can depose and dismiss A for his misconduct (and not conversely), and can impose binding laws upon him – then B is greater than A. But this is the position concerning the council and the Roman pontiff. The consequence is in accordance with the major premise; and the minor premise, with the words of the chapter which we are treating, *If thy brother shall offend against thee* etc. [Matt 18:15]. The Roman pontiff is our brother, has the same father in heaven with us and says the Lord’s

² Matthew 18

Prayer with us. He is a man beset by weakness like other wayfarers.¹ Any Christian is our brother; c. *Ad mensam* [C. 11 q. 3 c. 24]. Therefore, we may rebuke him and are bound to do so in certain cases.

At this point you object: yes, we may rebuke him privately, or in the presence of one or two [witnesses], if the sin is likely to be repeated; but we cannot "tell the Church," because he has no superior. Gregory [the Great]² understood this text in this way when reproving John, the patriarch of Constantinople, for having described himself as "universal patriarch," saying: "In dealing with cases where a fault is committed through thoughtless audacity, we observe what He Who is Truth has taught, in the words, *If thy brother shall offend against thee . . . If he will not hear the Church, let him be to you as the heathen and the publican* [Matt. 18:15, 17]. And I, with my responsory letters, wrote on two separate occasions on my own account in the humble terms in which I have striven to correct sinners in the whole Church. Whatever I should have done humbly I have not omitted, but I am despised in that correction. All that remains is for me to approach the Church, which has just been mentioned, *If he will not hear the Church etc.*" Now Gregory, who was pope, did not mean that he should approach himself. Pope Nicholas [I] spoke in similar terms to King Lothair, and the text is in c. *Praecipue* [C. 11 q. 3 c. 3].

You can argue against this that, in this case, the pope is in a worse condition than other Christians, if he cannot be corrected by the Church. Above, by those words, *Tell the Church* [Matt. 18:17], power is given to the whole Church, understanding by "Church" the greater and lesser prelates or the general council representing the whole Church, because the text continues in the plural, *Whosoever you shall bind on earth, it shall be bound in heaven* [Matt. 18:18]. The subject there is not binding and loosing in the internal and penitential forum, because no one ever denounces another's sin to the Church in that forum, although it might sometimes happen that a man cannot confess his own sin without being obliged to disclose another's sin there. The subject of the text, as we know from a

¹ Literally *viatores*, a common synonym for human beings

² *Registrum epistolarum*, ed. P. Ewald and L. M. Hartmann, vol. 1 (Berlin, 1891), p. 343 Ep. v.44.

series of chapters and expositions by the doctors, is denunciation and rebuking a brother in the external forum.

Second, you can argue to the same end (still proving the minor premiss above) that the keys were given to Peter only in the Church's name and on the Church's behalf. Therefore, they were given, rather, to the Church, because the ground of anything's [existence] is greater [than the thing itself].⁵ The antecedent is obvious from Augustine on John's [gospel], recited in c. *Quodcumque* [C. 24 q. 1 c. 6], where the text says, "*Whatsoever you shall bind on earth, it shall be bound in heaven* etc. If this were said only to Peter, the Church does not bind and loose. If, however, action is taken in the Church so that what is bound on earth is bound in heaven, and what is loosed on earth is loosed in heaven (since, when the Church excommunicates [someone] on earth, he is bound in heaven, and when the excommunicated person is reconciled in the Church, he is loosed also in heaven) – if, then, this is what happens in the Church, Peter, in accepting the keys, signified holy Church. If, therefore, the good in the Church are signified by Peter's person, the wicked in the Church are signified by Judas." See Augustine, homily 45 on John.⁶

Third, you can argue that there can be an appeal to the council or the universal Church not just from the supreme pontiff but from the supreme pontiff with a particular church; and a sentence of the supreme pontiff and a particular council can be annulled by the universal Church; therefore, the universal council is superior to the Roman pontiff. The antecedent is obvious from Augustine's epistle to Glorius, Eleusius and Felix the grammarian.⁷ In it he mentions the deposition of Caecilian, bishop of Carthage, unjustly carried out by the African bishops. They, after seeing the world in general in communion with Caecilian and not with the one they had appointed, argued their case with Melchiades, bishop of Rome, so that he would confirm their sentence, and they were condemned by Melchiades.⁸ Augustine says on this point, "As if it were not open to them to say of this, and with great justice, 'Look, we think those bishops who judged at Rome were not good judges.' There still

⁵ Aristotle, *Posterior analytics*, 1

⁶ *In evangelium Iohannis tractatus*, XLV, 10 C.C. 36 393.

⁷ Ep. 43. PL. 33 169.

⁸ Melchiades acted in a synod

remained a plenary council of the universal Church, where a case could be argued with those judges, so that, if they were convicted of having judged wrongly, their sentence could be annulled." This is confirmed by Augustine's authority,⁹ when he says, "There are some words of the Lord which seem to refer specifically to the apostle Peter; and yet they cannot be understood clearly unless they are applied to the Church, which he is known to have personified on account of the primacy which he had over the disciples. Such, for instance, are the words *I will give thee the keys of the kingdom of heaven* [Matt. 16:19] and similar things of this sort." This we cited above in Chapter xvi [of this commentary] from Augustine,¹⁰ who says that, although he once expounded *upon this rock* as indicating Peter, afterwards he said more often *upon this rock*, which is Christ, whom he confessed, as we said in Chapter xvi. Again Augustine says in Sermon 15,¹¹ "*I will give thee the keys of the kingdom of heaven* [Matt. 16:19]. By this He gave the keys to the universal Church as a single entity." And, in *Quaestiones veteris et novi testamenti*,¹² after many words, he speaks thus, "Not one man but the Church as a single entity received these keys." And Augustine¹³ reproves the error of those who say that the Church's keys were given to Peter alone and not to the Church. Jerome¹⁴ expressly holds this in his commentary on Matthew, and Rabanus¹⁵ says of Matthew 16, "This power to bind and loose, although it seems to have been given by our Lord to Peter alone, nevertheless, was given to the other apostles."

Fourth, you can argue that a council defines in the Church's name and not in the pope's; and it does so only because it has a superior's authority. That this is how a council defines is obvious

⁹ *Enarrationes in psalmos*, Ps. 108 CC 40 1585.

¹⁰ John Mair, *In Matthaeum* (Paris, 1518), fol. 60^v, citing *Retractationes*, 1, 10, CSEL 36 97-8. Du Pin substituted a direct quotation from Augustine, "I said in a certain place concerning the apostle Peter that the Church is built on him like on a rock, but I know that I afterwards most often expounded thus what was said by the Lord, *Thou art Peter, and upon this rock I will build My Church* [Matt. 16:18], so that *upon this* is understood as what was confessed by Peter, saying, *Thou art Christ, the Son of the living God* etc." [Matt. 16:16], for Mair's paraphrase

¹¹ This text is not a direct quotation, but it may be a paraphrase of that cited in n. 13.

¹² Actually, Sermon 295 PL 38 1349

¹³ *De agone Christiano*, xxx, 2 CSEL 41 134-5

¹⁴ Cf. PL 26 122.

¹⁵ Thomas Aquinas, *Catena aurea ad Matt. 16*, *Opera* (Parma), vol. 11, p. 199.

from the Acts of the Apostles, from which the Church derives the basis of councils. For it is written in Acts 1:23, *They appointed two, Joseph, called Barsabas, who was surnamed Justus, and Matthias*, that is, the apostles decided, although Peter proposed this publicly. Similarly, in Acts 6[:5], all the apostles chose Stephen and his fellows. This is more fully obvious from Acts 16[:23], relating how some of the brethren said that it was necessary to observe the things of the Law; and, no little dissension having arisen, Paul, Barnabas and some of the others, that is, from both dissenting groups, went up to Jerusalem to pose the question before the apostles. There James, in the name of the universal council, although Peter was present, delivered the sentence; and all the multitude of the elders who were in Jerusalem sent a letter to those who were in Antioch. This is obvious from the style, since they wrote, *The apostles and ancients, brethren, to the brethren of the gentiles that are in Antioch, and in Syria and Cilicia, greeting*, and what follows [in Acts 15:23]. Afterwards, in verse 28,¹⁶ they said, on the point at issue, *It hath seemed good to the Holy Ghost and to us to lay no further burden upon you* etc. Notice, then, that on this grave question, it was not Peter who pronounced the sentence, but the senate of the apostles and brethren, who represented the universal Church. A similar point arises in Acts 21[:25]. It was enjoined on Paul by the whole gathering of the elders that he ought to comply with the ceremonies of the Law. In all these councils the apostles as a group defined everything in the group's name and not in Peter's; therefore, they wished to indicate that the group was superior to Peter and had greater authority than Peter; therefore, it follows that the same procedure must be used in subsequent councils. If you say that Peter granted them this [superiority] out of humility, I will say the same of James, and of many points pertaining to Peter, namely that the Church permitted them to him out of humility.

Fifth, you can argue that the pope can be deposed by the council for his crime; therefore, the council with respect to him has superiority; an inferior cannot depose a superior. The antecedent is obvious, if he is a heretic, from c. *Si papa* [D. 40 c. 6]. But you say: when he falls into heresy, he ceases to be pope. If this were so, when he fell into hidden heresy, then [tenure of] the papacy would

¹⁶ Du Pin has "v. 34"¹

be uncertain; and no other bishop ceases to hold office because of heresy. Moreover, either heresy takes the papacy from him by natural or divine law, or only by human law. The first two do not seem [more applicable to this] than to other more serious sins; not the last, [for]¹⁷ who could enact such a law? Not the pope, because equal has no power over equal. If one pope established this, and Titius is canonically elected pope, although he might fall into heresy, he is not bound by a predecessor's law. This superiority is obvious from c. *Nunc autem* [D. 21 c. 7], c. *Anastasius* [D. 19 c. 9], c. *Achatius* [C. 24 q. 1 c. 1] and c. 24 *Si duo* [D. 79 c. 8].

Perhaps you will say, as some do, that, although the papacy may be taken away from this particular person, nevertheless, the papal office is not abolished [thereby], or else (what comes to the same thing) that the council has no power over the pope [as such]; rather, acting in a ministerial capacity, it dissolves the passive conjunction of the papal office with the pope. However, a certain lord cardinal¹⁸ makes a great fuss over this, saying, "the papacy is from God; the pope's person, from his father; the conjunction of the papal office with this individual person is made by a man or by men. Now the council can act upon this passive conjunction, but not on the papal office." He adds, "Nor should you who profess philosophy wonder that someone can act upon the conjunction of form with matter, who cannot act upon the form." This is worthless. The reason is it is a matter of general agreement. All who speak rightly think that the papal dignity is from God and that the pope's person is from his parents and from universal causes, although appointment to the papacy is done by men; taking away the papacy from the one who is pope is to deprive him of the papacy and to have authority over him, just as separating the intellectual form from the matter destroys the man, although it does not destroy the intellectual form. Although the papacy is in the person of the pope – Leo X, for instance – nevertheless, he [Leo] can cease to be pope without ceasing to be Leo. The council, therefore, can depose the pope in a case of heresy and in every case in which he incorrigibly and contumaciously persists in scandalizing the Church, as the gloss rightly says at the aforesaid c. *Si papa* [D. 40 c. 6], where the question is

¹⁷ The text is defective here

¹⁸ Cajetan was made a cardinal by Leo X in 1517. For this passage, see above pp 84–5, 86–7

why he can be accused more readily of heresy than of other crimes [The gloss] says, "Certainly I believe that, if the pope is incorrigible, and his sin is notorious and scandalizes the Church, he could be accused, for contumacy is heresy, as is obvious from c. *Si quis presbyteri* [D. 81 c. 15] The contumacious man is called an infidel, as in c. *Nullus* [D. 38 c. 16]." Panormitanus¹⁹ says that this gloss is remarkable and firmly approved by all. Ludovicus²⁰ says the same. Others say that this is true only of heresy properly speaking, but, in fact, this gloss appears to be founded on natural equity.

Sixth, you can argue that a king who incorrigibly squanders and subverts the well-being of the commonwealth must be deposed by the community which he leads; therefore, the supreme pontiff, if he proceeds notoriously and incorrigibly from vice to vice, should be deposed. The consequence holds. Otherwise there would be better provision for a secular polity than for the Church. If you say that it is not the same – the king does not have power and authority except from the kingdom which he freely leads; the pontiff has authority from God; therefore, it is not the same – I know that it is not exactly the same. Nevertheless, in regard to this comparison, I judge them to be the same, since the Lord gave the Church immediately power to correct the brethren [Matt. 18:18], and no brother is excepted; therefore, if the pope is incorrigible, he should be deposed, and this can be done only by his superiors. In this respect, therefore, to say that we must merely pray God for him and that there is no other remedy is strange and unreasonable.

Seventh, you can argue that Christ, the best legislator, left the best polity in the Church; but the best polity (assuming that it is a royal polity) is [to have] one head, who, if he should work to the destruction of the whole body, including himself, may be cauterized by the rest of the body. First, he should be warned humbly, following the order (so often mentioned) laid down in the gospel; and [then], if he is incorrigible, he should be deprived of the papal office. A number of eyes see more than a single eye, and it is for them to correct a single delinquent.

¹⁹ *Abbatibus Panormitani in quinque decretalium epistolarum libros commentaria seu lectiones* (Lyons, 1578), vol. 1, pt. 1, fol. 131th, x 164.

²⁰ Ludovicus Pontanus, *Consilia Ludovici Romani nunc recens multis mendis repurgata*. . (Lyons, 1565), fols. 237^o–239^o: Consilium 523. Du Pin, who used another collection, cites this text as Consilium 73.

Eighth, you can argue that everyone should follow the way which is in closer accord with the light of nature, unless the teaching of divine law is to the contrary; but it is more in accordance with the light of nature that an incorrigible head should be deprived of his authority, so that others may be deterred and be moved to behave well. The arguments of [our] opponents will be refuted by whichever [of the two] laws they have [relied upon].²¹

This also is confirmed by an example. If the French king were to go to Jerusalem and left his kingdom to be regulated by Prince A., who perverted everything by giving offices to the ill-deserving and oppressing honest men, who would judge but that the queen would act rightly in resisting [that prince]? Indeed that is the king's presumed intention. But that is how it is in the case we are considering: Christ ascended to the Father; He commissioned a vicar in His place; His spouse is the Church. If the vicar, after the manner of Prince A. mentioned above, should proceed incorrigibly, who could say that the Church would act badly by depriving the vicar of his authority?

Ninth, you can argue that both head and members will be reformed in this way; and, granted the opposite, the head never will be reformed. Now many evils follow from the head's being in an unnatural state, according to the ancient proverb, "When the head aches, the other members ache." Inferiors commonly imitate the wickedness of the head. The inferior spheres move with the motion of the *primum mobile*; and subjects are what their predicates allow.

Tenth, you can argue that the sacred and holy synod at Constance defined this,²² that the council has authority immediately from God over both the Roman pontiff and the remaining members. Now a legitimately gathered council cannot err. You say that only those of John XXIII's obedience defined, and the prelates of the obedience of Gregory XII and Benedict XIII did not accept this. This seems unlikely. The Cardinal of Cambrai (Pierre d'Ailly); Nicholas of Cusa, Cardinal of San Pietro in Vincoli;²³ the Patriarch of Antioch;²⁴ and Jean Gerson, men of greatest distinction, who

²¹ The text is defective here

²² In the decree *Haec sancta*, see COD 408-10.

²³ Cusanus was not present at the Council of Constance. Pierre d'Ailly, however, had held the titular church of San Pietro in Vincoli, which may explain Mair's erroneous statement.

²⁴ Jean Maureoux.

were at the council, would never have undertaken such a course publicly²⁵ if it had not been agreed upon by the greater part and, consequently, by the whole [council] categorically. Second, [on the supposition stated,] they would not have ended the schism, which had lasted for forty years as a result of electing two or three [rival] pontiffs. Rather, if the fathers of three, or two, obediences had dissented, they would have elected new ones; however, they did not do so, but elected Martin V unanimously. You may say that the Council of Constance was speaking of a case in which then there were three contenders for the papacy, so that no one was undoubted pope; and in [such] a case of uncertainty the council is superior to the pope. On the contrary: one of these three, or two, is pope; and the council is superior to him and deposes him. Therefore, it truly deposes the pope, as possessing superiority. Second, [if your argument were valid,] the celebrated men who were at the council would not have used that maxim in universal terms to establish the position which I hold. Besides, we read very much the same account of other councils. The Council of Basel, [for instance,] adopted this theory.

Someone²⁶ says that both councils were mad, when they advanced the proposition dealt with in [this] tenth argument. Secondly, they decreed that the council should meet every ten years,²⁷ whereas it is for the Roman pontiff alone to lay down such laws. [Thirdly],²⁸ the Council of Basel refused to move [elsewhere] at the insistence of Eugenius IV, although it belongs to the pontiff to change the site, as [the same person] says is certain.²⁹ He is unreasonable in what he says about the Council of Constance, which can be equated with the greatest councils. Nor did the Council of Constance exceed its limits, for, when it defined that it had superiority with respect to the pontiff, it could impose hindering laws on him. In the same way it is said that the pontiff cannot change [the location] of a council, once it is assembled, without its consent, because an inferior cannot move superiors when they are unwilling. Another

²⁵ The passage rendered here as "would publicly" is unclear in all editions.

²⁶ Mair is citing Chapter xxvii of Cajetan's *De comparatione*; see pp. 127-8 above.

²⁷ COD 438-9.

²⁸ The 1518 edition has, "Secondly".

²⁹ Mair is citing Chapter xi of Cajetan's book; see p. 58 above.

[objector] says that the Council of Basel gave birth to a basilisk. But he is a follower of blessed Thomas [Aquinas], seeking to sap the authority of the council, which concluded that the blessed virgin Mary was not conceived in original sin.³⁰

Eleventh, you can argue that perpetual plenitude of power resides in the Church, according to Christ's words, *Behold I am with you all days, even to the consummation of the world* [Matt. 28:20]. If that plenitude of power were in the pope, it would be mortal and corruptible on the pope's death; not so in the council and the Church, in which, when some have died, others succeed, *Instead of your fathers children are born to you* [Ps. 44:17 (45:16)], for the universal Church is perpetual, or perpetual is the Church – the form of the words does not matter. The point will be that universality never dies in the Church³¹ – c. *Turbatur* [C. 19 q. 4 c. 12]. Aristotle speaks in the same way of temporal matters, saying that the city's governance should remain and reside in accordance with its constitutional order, with the weightier part of that city.³²

You say that the papal dignity is perpetual in its cause, because men can immediately elect a pontiff. Against this you can argue that men may delay an election for a long time and elect different [candidates], as happened for forty years before the Council of Constance. Therefore, if a council has been assembled, it could exercise every power which the Roman pontiff can. Otherwise God would not have instituted the ecclesiastical polity well. In the same way, if the king died without an adult heir, the community could exercise all things which the king can in life. Nor is it worthwhile to say that the king has authority from the men whom he leads, who are susceptible to every power of which the king is capable. This is not so here; on the contrary, [the power of] the supreme pontiff is from God. This is to say nothing. Although [the power of] the Roman

³⁰ The Dominicans, following Aquinas, *Summa Theologiae*, III q. 27 a. 2, *Opera* (Rome), vol. 11, pp. 289–90, opposed an attempt at Basel to define the Immaculate Conception as dogma. Cajetan described the Council of Basel as having “the authority of a synagogue of Satan” when it issued this definition, see *Opuscula omnia* (Turin, 1582), p. 206.

³¹ Richer, followed by Du Pin, has, “the universal Church never dies.”

³² Mair cites *Politics*, III,8 – a common form of reference for this point in fifteenth- and early sixteenth-century texts, but one which does not seem to match any of the various divisions of Aristotle's text. The crucial term *talentior pars* seems to occur in William of Moerbeke's translation only at *Politics*, IV, xii, 1.

pontiff is from God, nevertheless, it is not likely that God failed to leave such power in the Church to an even greater extent than that³³ power subsists among the people of a single kingdom. Besides, many texts of pontiffs can be cited in support of this conclusion, which are of much greater authority against [the popes] than for them;³⁴ and many other arguments could be cited in support of that viewpoint. But I am content to pass over these.

[The solution of Cajetan's arguments]³⁵

Now I will bring forward the arguments of those on the other side, and we will see clearly whether they can be resolved at the root, without doubt about there being a valid reply. You can argue against this way [of thinking], or this conclusion, from c. *Significasti* [x 1 6.4], to this effect: that no precedent is found in [the records of] the councils that any council ever imposed a law on the Roman church, since all councils are held and receive their power by the authority of the Roman church; and the authority of the Roman pontiff is specifically exempted in their decrees, as is obvious throughout D. 17 and in c. *Dudum* [C. 3 q. 6 c. 9].

Jean Gerson,³⁶ called the most Christian doctor, responds, speaking against Pedro de Luna's errors, that "the Roman pontiff's laws must be glossed reverently and interpreted conformably to divine laws, otherwise they do not deserve to be called laws." If anyone wished to contend that these [principles] are true as they stand, he said, "With evangelical liberty we will reject those laws." I have set this down before all the resolutions of the arguments [on the other side], so that you may see what the doctor [Gerson] said plainly, "Divine laws or authoritative statements of the saints are cited" to which credence must be given on this side [of the argument]. You will not be surprised, therefore, if I give interpretations of papal

³³ Richer adds "political" here.

³⁴ The 1518 text is problematic here, but the translation above seems to convey the meaning Mair intended. Richer, followed by Du Pin, emended the text in what appears to be a mistaken sense.

³⁵ This heading was added by Richer.

³⁶ This passage is paraphrased from *Libellus articulorum contra Petrum de Luna*, OC. 6 275, or a similar text. Pedro de Luna reigned as Pope Benedict XIII in the Avignon line from 1394 until his deposition by the Council of Constance in 1417; he continued to claim papal authority until his death in 1422.

texts on this side which at first sight seem strange. This is how it is in many problematic matters, when there are apparent arguments or texts on both sides. What wonder, then, if we do not always look [merely] at the superficial meaning of words and at what the words indicate at first glance? Many passages could be cited from the pontiffs which suggest an entirely opposite meaning, so that commentators are accustomed to say: here is an argument for the superiority of council to pope, and *vice versa*. Nevertheless, I shall undertake to reply to the particular points I regard as worth considering.

I say that the cited c. *Significasti* [x 1 6.4] has two parts. The first is: councils are assembled by the Roman pontiff's authority. The second part is: councils derive their power from the supreme pontiff, and his authority is expressly exempted etc. I say that it is his prerogative to summon a council, and so he does ordinarily. Thus, in a certain sense, he gives power to councils, because he is the cause of a council's being gathered, just as it can be conceded in a certain sense that a priest gives the baptismal character, because he performs what is needed for God to infuse the character. Again, the pontiff's authority ordinarily is exempted in councils, because many definitions of councils are human [regulations] and are sometimes subject to exception and equitable interpretation.¹⁷ A council cannot be assembled permanently; therefore, it is consonant with reason to have someone who could dispense in this matter; that will be the Roman pontiff. This suffices for the reference to c. *Significasti*.

But, in regard to those three [cases],¹⁸ I say this: when there was no pontiff; or he was a captive; or mad; or refused to summon a council when reason dictated that one must be summoned, the council can and should assemble itself despite the pope's opposition; and the Church has such authority from God, just as other human communities do in their polities; and, whether a council is gathered by the cardinals, the supreme pontiff or itself, it has equal authority and power. It has this power immediately from God through these words, *Tell the Church. If he will not hear the Church* etc. [Matt. 18:17-18]. *Amen I say to you. . . where there are two or three gathered*

¹⁷ The doctrine of equity [*epikeia*] permitted exceptions to the letter of the law for the common good.

¹⁸ Cajetan had cited a passage from Jean Gerson (*De potestate ecclesiastica*, Consideration 12 OC 6 240) listing cases in which a council can be assembled without the pope's consent, see p. 66 above.

together etc. [Matt. 18:18, 20]. And, *Behold I am with you all days even to the end of the world* [Matt. 28:20].

Thirdly, where the council contradicted the pontiff in its statutes, the pontiff neither should nor can dispense; positive human matters are left to him to dispense, if a council of higher authority does not prohibit him.

But against this is argued: when the Roman pontiff is in the council, he establishes and imposes laws, and not the council – which only advises, while the pope defines, just as men advise a king, and he defines and imposes laws. It is obvious in ¶ *Cum ergo* [the end of x 4.14.8], where Pope Innocent says, “Since the prohibition of carnal copulation already is restricted to the fourth degree, so we wish it to be perpetual, notwithstanding constitutions concerning this already issued by others or by us.”

The answer is: the ordinary definitions of councils are issued under the name and in the name of the council; and that is the better procedure, both because supreme authority resides in the council, which cannot err in faith and morals, and, secondly, because that procedure is in closer conformity with the deliberations of the apostles’ universal council, as is obvious from what was cited above from the reading of Acts.³⁹ When they are issued under the name of the pope who is present in the council, he is acting as the proclaimer of the law. He is the Church’s most noble member; therefore, the council permits the law to be issued in his name, although something is said on both sides which smacks of the council’s authority. This is obvious in the decretal cited, “with the council approving”; afterwards the plural is used for itself to designate the council. In c. *Damnamus* [x 1.1.2 ¶ 1] is said, “We, however, with the sacred council approving, believe and confess” etc. The same is obvious from c. *Nimis* [x 2.24.30] and in many other places. In regard to the form of the argument, I deny that the council only advises. Indeed, by advising it defines, and by defining it advises, just as in the deliberations of [cathedral] chapters someone brings forward publicly his stated opinion, gives reasons for what he has said, and abides by the majority vote, just as the rector of the University of Paris does. From this it follows that all who participate

³⁹ See above pp. 189–90

in a council's deliberations share in its definitions. To share in defining is, simply, to define.

Second, it is argued: it is written in c. *Nemo* [C 9 q. 3 c. 13], "No one will judge the first [i.e., the Roman] see, for the judge [there] will not be judged by the emperor, nor by all of the clergy, nor by kings nor by the people." It is worthless to say that [this means only] that no individual can judge him, since the text includes the phrase, "nor by all the clergy." Now "clergy" is a collective noun; therefore, that canon means that the whole Church cannot judge the pope. It follows that it is a meaningless form of words to say that the pope, while he is superior to any particular church, nevertheless, is not superior to the whole, apart from the pontiff. This is confirmed as follows: the pope is called the ruler of the universal Church and of the Lord's flock, as is obvious from c. *Ubi periculum* [vi 1.6.3 ¶ 4]. Wherefore a prayer [in the mass for a pope's coronation] says, "God, shepherd and ruler of all the faithful, [look graciously upon] Your servant the pope, whom You have chosen to rule as the shepherd of Your Church" etc. And so it is with many texts which seem to indicate that the Roman pontiff is the shepherd of the whole Church; and, similarly, how there is a head without a body – and no body other than the whole Church can be assigned [to him]. The answer is that the canon includes its own exposition, by saying, "No one will judge the first see when it seeks to administer justice moderately." Provided, therefore, that it does justice, it is not to be judged, because the apostle's saying *The law is not made for the just man* [1 Tim. 1:9] is followed in many cases.

To the other texts [cited] the answer is that they usually are interpreted as referring to particular churches; and, because the pope has no superior on earth, therefore, he is called the shepherd of the universal Church. That can be expounded with a good sense. I, however, concede ordinarily and usually about all [of these] texts, that he is the rector of the universal Church and head of the whole Church, and that he has care of it, according to Christ's saying, *Other sheep I have* etc. *There shall be one shepherd and one fold* etc. [John 10:16] and according to the texts cited and many [others] which can be cited. It is compatible with this, nevertheless, that, in a particular case, the whole Church, [or] the council representing

it, apart from the pope, is superior to him, as [for instance], when [a council] has been assembled. [Here is] an example in a similar case: Francis [I] commonly is called king of the entire kingdom of France, and is superior not only to one province of France,⁴⁰ but to the whole categorically. Nonetheless, the remaining part, from which he has authority, is superior to him, although it cannot take the kingdom from him without a reasonable and extremely serious cause. Similarly, the Roman pontiff ordinarily is superior to the whole Church, [taking "church"] as referring to the remaining part [excluding himself], or, [again,] he ordinarily is superior to the whole body over which he presides as [its] head; but, habitually and virtually, the Church is superior to him. And, if the council has been assembled, representing the universal Church, it has superiority at its disposal which it can exercise over the pope. If he resists, the distinction [between the two cases] lies only in this, that the papal office exists by divine law and Christ's institution, whereas the king holds [his] kingdom from the whole people. I have spoken (I am not speaking now of Saul and David, kings of Judah and Israel.) But authority is communicated to the Church by Christ, just as [it was to] the supreme pontificate; and that authority does not depend on the supreme pontificate's authority, but immediately on God. So, in one way, the Church's power resembles the power of the people of a particular kingdom; and it differs [from it] in another way. But, as regards superiority, [the two powers] are similar, so that, just as the people is superior to the king virtually and in a [particular] case, as in critical situations, in which the three estates of the kingdom are summoned, whose function it is to advise the king in [such] cases, so, in critical situations, the universal council, duly assembled, has the power to impose binding laws on the pontiff, directed at him personally, and not at his office. I add, however, that the body of the Church cannot change its royal polity into an aristocracy or timocracy, because then it would contravene Christ's institution. A free people, on the other hand, can change the polity for a reasonable cause.

But you can argue against this that the real head is superior to the whole body, and invariably so; therefore, the Roman pontiff is superior to the mystical body in all circumstances. Consequently,

⁴⁰ Literally "of Gaul"

the body, when assembled, has no superiority over the pope, who is its head, in any circumstance. The answer is that the real head is not superior to the whole body, for the body includes the head and the remaining parts. Thus the head of an actual animal is not superior to [the whole animal];⁴¹ so the pope is not superior to the whole Church, for the pope is part of the Church. Now the pope is not superior to himself. If you are speaking of [superiority to] the other parts, making the distinction we are accustomed to make, then I say that the similarity [of the two cases] is not complete in every respect. A real head is superior to the whole body, always understanding by "body" the remaining part; the pope, however, is not superior to the mystical body, nor is the similarity complete in this respect. Similarity in every way is not needed for [there to be] a similarity. Christ, on the other hand, Who is the Church's essential head [cf. Eph. 1:22], is superior to the whole body, including both the pontiff and the rest of the [Church's] body, in this way; and Christ is superior to the whole body and the whole Church, regularly and in every eventuality. Indeed, it is called Christ's mystical body; and Christ is its head – that is, [its] essential head, whether or not there is a pope, as when [a pope] has died. You may say, on the analogy of a living man, that the head sometimes is nearer to the center [of the earth] than the body, when, distorted and contorted, he stands on [his] head. So, when the pope's demerits require the superiority of the body, then the body actually is superior to him.

You may say that the pope is the head of the Church; therefore, he has some sort of body, understanding by the body that which is subject to him regularly and in all circumstances. It is inappropriate for there to be a head with no body belonging to it. Furthermore, [you object] that the pope is superior to this particular church regularly and in specific cases, and superior likewise to that one, and so of any other one. Therefore, he is superior to all the particular churches regularly and in specific cases. Therefore, [he is superior] to the whole [Church]. Furthermore, the bishop of Paris is superior to his whole diocese regularly and in specific cases; therefore, the Roman pontiff [likewise] is superior to the whole Church. The

⁴¹ Recher, followed by Du Pin, supplied the words *totum animal* to clarify the 1518 text's *se*

consequence holds. The pope has all Christendom for his parish, just as the bishop of Paris has the bishopric of Paris [for his].

The reply to these arguments is to deny that the pope is the whole Church's head in that sense. Just as he does not have the rest [of the Church] understood in this way, [that is, apart from himself, as his] body, so he is not its head. In this way, I grant that he is the head regularly; but it does not follow, therefore, that he has a body, equated with the whole Church, in every eventuality, as is obvious [in the case] of a king and his kingdom.

As for the second argument, I grant the antecedent in its copulative⁴² sense; but I deny the consequence. "All" is understood either collectively or distributively. If it is understood in the latter sense, there is a false use of the singular. It follows clearly by accumulation that the pope is superior to every particular church. If "all" is taken collectively, it is obvious that this is not accumulation; but it must then be understood comprehensively and in the combined sense. One must make this distinction: the pope is superior to this particular church both regularly and in specific cases, and the pope is superior to this [other] particular church both regularly and in specific cases; and so on one by one. In the divided sense that [proposition] is true; in the copulative sense, however, it is false. Nor does the first [sense] imply the second, just as it does not follow [from the proposition that] the sum is greater than this part and [greater than] that part, and so on of [its] several parts (understood in the divided sense) that in the compound sense [it is greater than the whole].⁴³ The antecedent is true, as is obvious, and the consequent false, since the whole is equal to all of its parts, or really the same as them, as a sounder position holds.

As to the other argument, in which you say that the bishop of Paris is superior to his whole diocese etc., I grant the antecedent and deny the consequence. For the bishop of Paris can perform certain rites which no one [else] in his diocese can perform. He can administer confirmation and confer [holy] orders, which no one [else] in his diocese can. (He does not have a bishop subject to him in his diocese.) The whole Church, [however,] or a council

⁴² Richer, followed by Du Pin, has added "or the divided"

⁴³ The 1518 text here omits the alleged conclusion of the argument, and Richer, followed by Du Pin, erroneously supplies the conclusion *est utraque parte maior*. The translation above postulates, rather, *est toto maior*.

representing the Church, can do everything the pope can and has a certain prerogative beyond [those of] the pope, as will be said more fully below. An individual is superior to any member of his household and to all of them, both regularly and in specific cases; another, however, [who is] greater, is not thus superior to all in this way. [Take, for] example, the head of a household in regard to [his] children and the servants whom he has engaged⁴⁴ for his benefit; and, similarly, a minor lord.⁴⁵ A king, on the other hand, is not superior to everyone in the kingdom regularly and in specific cases, for either he is elected or his first predecessor was elected by the people for its common benefit, and not for his.

Against this you can argue that it follows from these points that the ecclesiastical polity would not be the best, since it would not be royal, which Aristotle⁴⁶ regards as the best of polities. The consequence is unacceptable, and what would follow [from it] is obvious. Since the council is superior to the pope, the polity should rather be called an aristocracy. Indeed the whole Church throughout the world is superior to him; and so the ecclesiastical polity is a timocracy, which is the lowest and rarest of polities.

The answer is that some say that the ecclesiastical polity is mixed, but I do not say so. Answering [that] argument, I deny the conclusion. I deny that [the ecclesiastical polity] is not the best, and I deny that it is not royal. It is not necessary in a royal polity that the king be superior to all of his kingdom both regularly and in specific cases, as is obvious from what has been said. Rather, it is sufficient for the king to be superior to any individual and to the whole kingdom regularly, while the kingdom is superior to him in certain cases and eventualities. This is the case with the ecclesiastical polity. The pope is superior to any individual regularly, and superior to all in Christendom as long as they are dispersed throughout the world. But, when the universal council is assembled, it is superior to the Roman pontiff.

Tribunes, captains of hundreds, fifties and tens, of whom we spoke above,⁴⁷ were appointed to help Moses and the elders [cf.

⁴⁴ Richer, followed by Du Pin, altered *accersent* to *acquisitum* ("has acquired")

⁴⁵ Richer, followed by Du Pin, altered *domino* to *dominio* ("estate").

⁴⁶ *Nicomachean Ethics*, viii, 10

⁴⁷ Mair, in *Matthaeum*, fols 56^v-57^r, commenting on chapter 15, refers to the selection of the seventy elders in Numbers 11, but not to Exodus 18.

Exod. 18:25]. Perhaps you will say that Moses was superior to all of them; therefore, the pontiff is superior to the universal council. The consequence is denied. This authority, which was given to the whole Christian Church, was not given to the Mosaic Church or, at least, to those few men.

But you can argue against this from what has been said that Christ is superior to the whole Church, dispersed or gathered, in specific cases or regularly; but the pope is the vicar of Christ and His presiding officer on earth; therefore, he is superior to the Church in every sense mentioned.

The answer is: I grant the major and the minor, but I deny the consequence with what follows. A vicar seldom has a scope as wide or as [generally] accepted as the person whose vicar he is. Christ is superior to the whole Church and the pope as well; not so the Roman pontiff. Second, Christ can change the sacraments and establish that there be baptism in vinegar or wine, and not in water, that Christ's body be consecrated in a material other than bread, like cheese or meat; but the Roman pontiff cannot.

Third, you can argue that supreme ecclesiastical power is in the pope, and there is another supreme power in the council; and those powers really are distinguished because they subsist in different subjects. Now plurality of princes is bad – *Metaphysics*, xii;⁴⁸ therefore, there are not two supreme powers, and papal power is supreme in the Church, as is well known. Therefore, the Church's power is not supreme, although it is a power; accordingly, it is a power subject to the pope's power.

The answer is that ecclesiastical power, properly speaking, is nothing but, in metaphysical terms, a man or men having power. Nevertheless, the word implies or connotes something else, as is obvious from its definition; consequently, supreme power is not, as it were, an accident inhering in the pope or in the council. I do not posit real relations or reasons distinguished by foundation and term. But, setting aside metaphysics, replying to the point, I say that the two powers are one and the same, according to the rule [laid down in] the *Topica*,⁴⁹ "Where one entity [exists] on another's account, there [is] only the other," as is obvious in Boniface VIII's consti-

⁴⁸ In fact xi, 10.

⁴⁹ Aristotle, *Topica*, iii, 2.

tion *Unam sanctam* [Extrav. commun. 1.8.1].⁵⁰ I explain this with an example. There is supreme power in Christ, and [also] in the supreme pontiff. Here I turn this argument against you. In the same way, supreme power resides in the kingdoms of the French and of the Scots, and also in their kings. The point is expressed better by saying that, in reality, there are two powers, one of which is superior to and less limited than the other, and the other is subordinated to it; and so, in a sense, there is only one [power].

That is how it is in the case before us. Christ's power over the Church is less limited than the pope's power, which has certain limits to what it can do; God, however, [is] not [limited] thus. Just as a horse moving a millstone in a circle has certain limits within which it has to proceed; not, however, the man leading the horse, who may wander freely where he wishes. So it is with Christ, Who can do no wrong and can do whatever does not involve [contradiction]; it is not so, however with the Roman pontiff. In Christ there is supreme, independent power, as a rule and in specific cases; He can do whatever does not involve contradiction. In the pontiff there is, as a rule, supreme ecclesiastical power, with which he can act to build up the Church, and from him it is not permissible to appeal regularly. However, because he may err and act badly, it would be unreasonable for it not to be permissible to appeal from such a sentence in specific cases.

There is one other power, [which is,] in some way, superior and unlimited, the council's power, which cannot err in faith or be in sin in [respect to] any of its members, [and] from which it is not permissible to appeal on earth; but one must, in the last resort, abide by its sentence, just as Plato urges [us] to remain quiet about specific details.⁵¹ The universal council represents the whole Church, which is *without stain and wrinkle* [Eph. 5:27], Christ's spouse; and just as the one who is represented cannot err, so also the representative [body], as we are duty bound to believe according to Christ's promise, *I have prayed for thee, [Peter,] that thy faith fail not* [Luke 22:32]. He is not speaking of Peter's personal faith, which did fail after that promise, as Christ indicated when He said,

⁵⁰ According to Boniface, temporal power was inferior to and depended upon the spiritual power.

⁵¹ The Plato reference comes from Boethius, *Commentaria in Porphyrium*, PL 64.110, where the reference is to the problem of universals.

Thou, being once converted, confirm thy brethren. This he did say to Peter personally. Nor is there any inconsistency in the hypothesis that, in the same text, one part [of it] should be understood as referring to the Church, which Peter rules, and the other part as referring to Peter personally, just as He, similarly, said, *I lay down My life, and No man taketh it away from Me* [John 10:17-18].⁵² Similarly, in a kingdom and a free people as a whole, there is a supreme and originating power which cannot be taken away; in the king, however, there is an administrative power for honest service. So, in a certain sense, there are two powers; but, because one is ordained for the other's sake, they can, effectively, be called a single [power]. So, in the [case of the] Church and the pope, there is an ordinary supreme power in the pope, ordained for the Church, and another, less limited power in the Church; and thus, since the one is ordained for the sake of the other, there may be said to be [only] one [power]. The pope, in his way, is the head immediately under Christ, and the Church, in *its* way, is [the head] immediately under Christ. The pontiff is the vicar of Christ; and the Church is His spouse, whose head the pope is in the sense indicated, and its minister, according to what is said in his letters, "Servant of the servants of God." Now all in the Church are God's servants.

But [you can argue] against this that the council's or the Church's being holy does not prove that the Church is superior to the pontiff, because, on this basis, a holy old woman would be superior to the supreme pontiff. The same obviously is true of inerrancy. Therefore, the issue of superiority between the pontiff and the council is not settled by such points. Many councils have erred; therefore, the council can err like the pontiff. This is corroborated [by the fact that councils] are not so confirmed [in grace] that they cannot err [in doctrine] nor commit a mortal sin, any more than the pontiff [is]. Therefore, [the argument holds good].

The answer is, granted that the Church's being holy does not argue that it has authority etc., that there are many other supporting arguments. Since the Church always is holy, it cannot err and has the right to reform anyone both in head and members (together with the other things adduced [above]).⁵³ Therefore, one concludes

⁵² The text cited continues, *I have the power to lay it down, and I have the power to take it up again.*

⁵³ See pp. 293-4 above

that the Church has supreme power on earth. As for the other [argument], I deny that duly assembled councils have erred; and I deny that they are not confirmed in grace. This is obvious from the things cited above, where we spoke of the Church's sanctity.⁵⁴

From all of these points it is obvious that it matters little whether there are said to be two supreme powers, or whether, by distinguishing them as two, one is reduced to the other, which is the same [as there being one]. Aristotle⁵⁵ said of the first cause that it would be inappropriate for there to be two first causes. I ask you whether Aristotle would not have called a king supreme in his kingdom the first [in it] and [its] head? It is certain that this is what he ought to have said, despite the fact that a free people is superior to the king in specific cases, that is, in a case of a king's converting kingship into tyranny, and even [being] incorrigible, he can be deposed by the people as if by a superior power. Thus Aristotle ought to have said that an earthly king is subject to the first cause or prime mover [of his power]. In subordinate causes, where one is ordained for another's sake, it would not be inappropriate to refer to two first [causes].

Fourth, you can argue against the first proof, which stands on that authority from Matthew 18[:15–20], by which it is proved that the keys were conferred on the Church, that, if this were true, it would follow that the keys were conferred on the Church before Peter. This is inappropriate, and what follows from it is obvious. Although the keys of the Church were promised to Peter in Matthew 16[:19], nevertheless, they were not conferred on him in Christ's lifetime; nor would that have been appropriate, since Christ still lived a mortal life; therefore, they were conferred on Peter after the resurrection. But before that the keys were conferred on the Church through, *Amen I say to you, whatsoever you shall bind* etc. [Matt. 18:18]. That this is inappropriate is obvious, because the Church might appoint someone as supreme pontiff, who would then have been head of the Church, before Christ appointed [its] head; or, granted that Christ would not have appointed the head. This is obvious: just as a free people in sufficiently large numbers can establish a king for itself, so the whole [Christian⁵⁶] people, having the

⁵⁴ Mair is referring to his exegesis of Matt 16, see *In Matthaeum*, fol 60^r.

⁵⁵ Cf. *Metaphysics*, IV

⁵⁶ Du Pin has "holy."

keys in itself, could appoint someone as head. Perhaps you will say, "No," because those who were not yet bishops [themselves] could not appoint a bishop. On the other hand, it can be argued that, supposing that they were bishops, they could appoint a chief bishop. Similarly, a layman can be pope in the composite sense, just as a non-priest can be a parish priest⁵⁷ and can have jurisdiction in the external forum. The answer is that, granting all of these points, such an appointment would have been merely human, and [the person appointed] could be deposed again by men. This is not the case with the appointment of Peter and his successors, who have primacy by Christ's appointment

Fifth, you can argue, and this is the second argument against the same proof: in the text *Tell the Church* [Matt. 18:17] either the Church's prelate is meant, or the whole Church, or the council representing it. The second cannot be meant, because then someone should take a case only to the Church or the universal council; and, if this were the case, this evangelical correction would be extremely rare; therefore, it is held, first, that by "Church" is understood the Church's prelate. This is confirmed by the fact that the gloss expounds "Church" in this way. The answer is that words must be understood according to the subject-matter. By "Church" is meant the one who has punitive jurisdiction, whether he is a prior, an abbot, a dean, an archdeacon, a council (provincial or universal). Now the pope has no one superior to him but the council; therefore, "church" in regard to his correction means the universal council duly assembled.

Sixth, you can argue to the same end that the universal council cannot do all that the Roman pontiff can; therefore, it is not of such power as the Roman pontiff. The antecedent is obvious: the council cannot give indulgences, confer benefices; nor confer [holy] orders, since it is not a priest.

Seventh, you can argue that the Church is called one, only from the unity of the head; therefore, there is one head.

The answer to the sixth [argument] is to deny the antecedent: [the council] can give indulgences. The pope gives indulgences from the Church's treasury; *a fortiori* the Church can give indulgences

⁵⁷ Literally, "be a curate." Mair implies by "composite sense" that the layman is not fully a curate, since he has jurisdiction but lacks the sacrament of holy orders.

from that treasury. It can confer benefices, impose canons with an automatic sentence [of excommunication],⁵⁸ restrict the matter of matrimony,⁵⁹ dispense concerning benefices, create cardinals and do all that the Roman pontiff, the supreme pontiff, can: "Where the pope [is], there [is] Rome."⁶⁰

The answer to the seventh [argument] is that, when no one is pope, the Church is no less one than when the pope is alive, because the Church is called one from [its] unity with the essential head, Christ, Who does not die, and from the unity of faith and charity, and not from unity with the accidental head. For a man to oppose the pope is compatible with his being in union with the Church; provided he takes his stand under Christ as head, he is in union with the Church.

Eighth, you can argue that Saint Thomas and many theologians have held and hold that the pope is superior to the council; therefore, the opposite is not safe.

Ninth, you can argue that it is more favorable to piety and the faith to hold that the pope is superior to the council rather than the converse; therefore, [that view] must be held rather than the opposite. Either the position which we hold is a matter of faith and one of the things which must be believed of necessity, or [it is] only probable. If the first, it follows that others asserting the opposite are heretics, since they dig in their heels over their assertion of the opposite; if the second, then holding the opposite [opinion] is allowed.

The answer to the eighth [argument] is that Blessed Thomas held that the holy virgin was conceived in original sin; that matter cannot be without form; concerning God's absolute power, that God cannot make two angels of the same species;⁶¹ and many similar things which are considered quite improbable in the schools. As far as theologians are concerned, many more hold the opposite. It has been shown above that Augustine and many other doctors take the

⁵⁸ Sentences of excommunication *latae sententiae* were incurred automatically by committing a certain crime.

⁵⁹ That is, eligibility to marry, by deciding which restrictions on account of kinship by blood or sexual union, marital or illicit, applied to the laity.

⁶⁰ Mair's use of this saying, which ordinarily would be used to extend papal power, is an awkward one.

⁶¹ The editions say "that God can make only two angels of the same most special species"; but see *Summa Theologiae*, 1 q. 50 a. 4, *Opera* (Rome), vol. 5, p. 10.

view which we adopt. Various cardinals held this, like John, patriarch of Antioch; Pierre d'Ailly, Cardinal of Cambrai; Cardinal Nicholas of Cusa; the doctor called most Christian, Jean Gerson, chancellor of Paris, who never can be praised sufficiently; and, from the days of the Council of Constance, our faculty, in which you will find more trained theologians than in two or three kingdoms, which supports this position to the extent that no one is allowed to assert the opposite as probable. Moreover, natural equity is on the side of this view; and it is contrary to all right reason to say that, if the pope acts wrongly and dissipates the Church's goods, he cannot be rebuked. Paul publicly rebuked Peter after [he was] supreme pontiff [cf. Gal. 6:11]. If he is incorrigible, he must be deposed on account of his fault, indeed even without his fault, although he must not be deposed without cause, as, [for instance,] if he is a captive among infidels and there is no hope of his liberation; if two are competitors [for the papacy] and peace cannot be procured otherwise; or if he is mad and useless.

[In reply] to the ninth [argument], the antecedent is denied. It is not a good thing to extol the pope while disparaging the universal Church, which always is holy and has [the power of] final judgment in both faith and morals. You will not be surprised that they extol the pontiff more than the council. The council rarely is assembled, nor does it grant ecclesiastical dignities. The pope gives these; hence men flatter him, saying that he alone can square all circles and circle squares both in spiritual and temporal matters.

The reply to the tenth [argument] is: it does not follow that, because this position is certain, therefore, it is a matter of faith, for it is certain that I am, but my being is not a matter of faith. Someone, however, can reply at this point by saying, "This opinion, namely, that the council is superior to the pope, is not self-evident; and [yet] it is certain. It is not [a matter of] knowledge, nor [of] wisdom etc.; therefore, it is [a matter of] faith. But let it pass.

In conclusion, I say that this position should be more acceptable to any wise pontiff than the opposite. Although we say that a council is superior to the pope in certain cases and could correct him, we also say that the pope is [pope] by Christ's institution and cannot be deposed without a very grave cause, which has happened scarcely thrice in 1,000 years. And, even if the pope swore a thousand times to guard the liberty of the supreme pontificate, nevertheless, he

should be amenable to reason and wish to be corrected if he errs incorrigibly.

I will not put forward more arguments against the position which I take, because, in view of the similarities [among the various arguments] and the answers given to the arguments stated [here], anything that is or can be adduced by opponents may be answered easily.

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